IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 10361 of 2011

M/s. Sujata Electric Pvt. Ltd.
Vs.
Regional P.F. Commissioner & Ors.

For the Petitioner	**: Mr. Soumya Majumder, Sr. Adv.** **Ms. Sanjukta Dutta.**
For the Respondents	**: Ms. Aparna Banerjee.**
Judgment reserved on	**: 09.04.2026**
Judgment delivered on	**: 12.05.2026**

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging an order dated 03.08.2007 passed under Section 7A of the EPF Act and the order dated 03.05.2011 passed under Section 7B of the EPF Act and also the prohibitory order dated 14.06.2011 passed by the respondent P.F. authorities.

2. The petitioner's case in short is that the petitioner company is engaged in the manufacturing activities of electrical equipments and for that purpose had employed employees at its factory and office. That apart, the petitioner company had got jobs executed through contractors who carried out the work by engaging their own men. The petitioner company at no material time had any supervision control or administration over the manner and nature of work of the contractors' employees.

3. It is further stated by the petitioner that the establishment of the petitioner company was covered under the said Act and was initially allotted a P.F. Code Number on the basis of a voluntary declaration made by the petitioner company to the effect that the said Act became applicable to the establishment of the petitioner company on and from 07/05 with employment of 20 or more employees in the establishment. Since then the establishment had been paying regular contribution under the said Act in respect of the covered employees. The respondents vide their letter dated 15.09.2006 preponed the coverage from 7/2006 to 1/1997. An inspection was done by the Enforcement Officer of the respondent authorities, but no copy of the inspection report, or any report dated 17.08.2006 had been given/served to the petitioner.

4. The petitioner then received a summon dated 01.05.2007, in connection with a proceeding under Section 7A of the said Act, whereby dues under the said Act were purported to be determined for the period from 01/97 to 06/06.

5. It is stated that although it was mentioned in the said summons initiating the 7A proceeding that the Authorized Officer had reason to believe about failure of remittance of dues by the establishment on consideration of certain information laid before him, yet no copy of such alleged information or material which formed the basis of such consideration was furnished to your petitioner. The said summons also was not accompanied by a copy of the report dated 17.08.2006 as purportedly prepared by the Enforcement Officer.

6. On receipt of the summons, your petitioner company was duly represented on 08.05.2007 before the Authorized Officer in the first hearing. A notice dated 14.05.2007 under section 32 of the Code of Civil Procedure was issued in an utter malafide manner for appearance of the directors of the company on 28.05.2008. On May 24, 2007, a prayer for adjournment was made with a request to fix the date of hearing after 15th July, 2007 since the directors were outside the country. On 15.06.2007 the respondent authorities issued another notice, a copy whereof notice was given fixing the date of hearing on 20th July, 2007.

7. It is the case of the petitioner that an order under Section 7A of the EPF Act was passed by the respondent authority, without giving a proper hearing to the petitioner herein in spite of the petitioner having duly made a representation stating that he had not been given a chance of hearing in the said case.

8. The authority concerned then passed the impugned order thereby assessing a sum Rs.24,85,652/- towards dues under section 7A of the said Act for the period 01/97 to 06/06 and a sum of Rs. 17,22,047/- towards dues under section 7Q for the period from 08/97 to 06/06. The said order was received by the petitioner's establishment on 08.08.2007.

9. It is stated that only on receiving the copy of the order under Section 7A of the Act that the petitioner came to know the contents of the inspection report dated 17.08.2006. It is the case of the petitioner that from the spirit of the inspection report as contained in the said order under Section 7A of the said Act, all the respondent authorities had taken into consideration **the incentive amount and overtime payment as part of the wages and thereby purportedly assessed contribution on the said amount.** It also appears that the contractor's workers in respect of whom the entire responsibility to pay wages belongs to the contractors by way of being an independent establishment, have also been considered for assessing the alleged dues of the establishment. It is stated that the establishment of the petitioner company **pays overtime wages and production incentive** to the employees employed by the company **which cannot be termed as**

wages so as to attract liability to pay contributions under the said Act. That apart the respondent authorities have taken into consideration the contractor's workers in respect of whom contractors might have paid the contribution, without issuing summons to the said contractors. In short in a very slip shod manner and with undue haste the entire proceeding was closed and order was passed.

10. Even the review application under Section 7B of the Act was rejected by the authority without considering the grounds of review.

11. Parties have filed their affidavits in course of hearing.

12. In their affidavit-in-opposition the respondents no. 1 to 4 being the PF authorities have stated that the Enforcement Officer appointed to inspect the petitioner's establishment submitted a report as follows:-

> *"(I) That as per evidence on record, the establishment, the petitioner should have been covered under the Act with effect from January, 1997 as identifiable employment strength of the establishment had reached 35 (Thirty five) as back as on January, 1997. Therefore, there is sufficient ground to prepone the instant date of Provident Fund coverage of the establishment from 1-1-1997 instead of July, 2005.*
>
> *II) That so far as payment of Provident Fund contribution and other allied dues are concerned, it is observed from the relevant documents to the extent made available for verification that the establishment has remitted provident fund dues duly considered the amount of incentive and production bonus paid to the employees for the month of*

July, 2005 as Provident Fund payable wages in addition to basic wages. But suddenly ***on and from November 2005 stopped onwards effecting the provident fund compliance on incentive amount and from December 2005 stopped effecting the provident fund compliance on the amount of Production Bonus. Such reduction on total quantum of benefits available to the employees is not permissible under the relevant provisions as envisaged under Section 12 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.***

III) That during the course of inspection, the concerned employer has produced ***salary register/sheets*** *in respect of the office staffs and permanent workers from February 1995 to June 2006 which were taken into consideration while computing the employment strength of the establishment and disclosed in the coverage application. Apart from that, it was further observed from the salary register/sheets in respect of another set of workers (reportedly working as temporary and purely on contract basis) from January, 1997 to January, 2006, but those workers have never been considered by the employer while furnishing the month-wise employment strength since submitted along with coverage application. Thus, the concerned management has failed to extend the statutory provident fund membership to all the eligible employees of the establishment and thereby violated the provisions of Paragraph 26 of the Employees Provident Fund Scheme, 1952 which construed deliberate evasion of Provident Fund membership for the said period.*

IV) That the concerned employer had also produced the relevant Bills for engaging Security Personnel ***through outside Security Agency viz, M/S. Panther Guards Pvt. Ltd.*** *during the period from January, 2001 onwards and Provident Fund Compliance was found effected under the* ***provident fund code no. WB/24418 of the said Security Agency.*** *However, prior to the said period no formal Security Agency was found to have been engaged for such security services instead the security service charges found to have been paid to different*

individual persons (reportedly residing in the local areas) as evident from the General Ledger.
V) That under the above premises, the employer, M/S. Sujata Electric Pvt. Ltd, the petitioner is liable to pay an amount of Rs.30,32,323/- towards outstanding provident fund dues covering the period from January, 1997 to June, 2006 which arrived at on computation of dues deposition on account of ***preponement of Provident Fund coverage from January, 1997 for non remittance of Provident Fund dues on the payments of incentive and Production Bonus and also for evasion of Provident Fund membership in respect of the employees engaged as temporary and contract basis including Security Guards engaged prior to January, 2001."***

13. It is admitted by the respondent authorities that on the basis of the said report of the Enforcement Officer, the respondent authorities have issued summon and notice under Section 7A of the EPF Act and conducted a hearing and finally passed the impugned order. **The specific case of the respondent authorities is that as per evidence on records, the petitioner establishment had employed 35 employees/workers in January 1997 and the total salary and wages of the employees was Rs. 27,555/-** calculated on the basis of the number of days attended by an employee. **This calculation had taken into cognizance the incentive for the workers, overtime work. Further from April, 1997 there is ample evidence to show that the petitioner no.1 started making one lump sum payment to the employees under the nomenclature**

Production Bonus. It is further on record that the petitioner while preferring an application for coverage had on its own taken into consideration the amount of Incentive and **Production Bonus as paid to the employees from the month September 2005 as components of the provident fund leviable wages.** Moreover, the petitioner's action of suomoto stoppage of production fund deduction on 'Incentive' from November, 2005 onwards and 'Production Bonus' from December, 2005 onwards is not only violative of Section 12 of the Act, but also makes them guilty of approbate and reprobate.

14. It is further stated by the respondent/RPF that **once having contributed towards the statutory fund, on the components of 'Production Bonus' and 'Incentive' the petitioner cannot be allowed to stop such payments.** The Act has a self application code and once the 'Schedule of Activities' which eminently describes the establishment's activity profile gets notified, it is the statutory duty of the employer, to start making the mandatory contributions to the statutory Trust, once its employment strength reaches 20.

15. The establishment was mandatorily required to make contributions from January 1997 onwards. This fact had even been accepted by the establishment's albeit only for regular employees. It is notable that even for the regular employees, the establishment had not deducted the dues during the earlier period, but subsequently payments were made by them in lump-sum. Thus in this light the only issue left to be decided was as regards the contributions of contracted employees and the deductions on wage components like 'Production Bonus' and 'Incentive' which for reasons already explained, have been decided earlier. In this light the report's reliance on the aforesaid two aspects of non-deduction during the pre discovery period and retrospective application of Section 12 is not legally tenable.

16. The petitioner by way of reply has denied the case of the respondents and have categorically stated that **preponment of the date of coverage of the establishment had been accepted by the petitioner.** However the respondent authorities have proceeded on an evidently erroneous misinterpretation of Section 12 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 only on account of the establishment having deposited contributions on Overtime Wages and Incentive Bonus for a single month of July 2005. **Rectifying such mistake by the establishment would neither attract the mischief of Section 12 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, nor would saddle the establishment with a continuous liability so as to allow the mistake to perpetuate.**

17. It is further stated that Incentive Bonus and Overtime Wages do not to attract the liabilities under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, since they are not to be construed as regular payment made across the board and universally paid to all employees of the establishment.

18. Incentive Bonus was paid for attainment of certain targets and Overtime Wages were paid as statutory liabilities. Both the aforesaid payments are judicially recognized to be dependent on various contingencies, and not forming a uniform condition of service.

19. Thus none of the two headings mentioned above can attract the mischief of liabilities under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The reference to Section 12 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is also grossly misconceived since the same has no manner of application in the instant case. The answering respondents evidently proceeded in a perverse manner by misinterpreting Section 12 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

20. The petitioner further argues, that **Section 12 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has been grossly misapplied in the facts and circumstances of the case by the respondents.** By reason of wrong payment of contribution on Incentive Bonus/Production Incentive and Overtime Wages, the answering respondents cannot make the establishment liable in perpetuity. It is reiterated that there has been no reduction of wages as alleged by the respondents against the petitioner qua its employees on account of liability to pay contributions under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

21. Both parties have filed their respective short notes along with judgments relied upon and on filing their written notes have argued as follows.

22. The petitioner has relied upon the judgment in Regional ***Provident Fund Commissioner(II), West Bengal versus Vivekananda Vidyamandir & Ors. reported in AIR 2019 SC 1240: (2020) 17 SCC 643,*** wherein Hon'ble Supreme Court has held as follows:-

> ***"13. Basic wage, would not ipso facto take within its ambit the salary breakup structure to hold it liable for provident fund deductions when it was paid as special incentive or production bonus given to more meritorious workmen who put in extra output which has a direct nexus and linkage with the output by the eligible workmen. When a worker produces beyond the base or standard, what he earns was not basic wage. This incentive wage will fall outside the purview of basic wage.***
> ***16.*** *The aforesaid provisions fell for detailed consideration by this Court in* ***Bridge and Roofs*** *[Bridge & Roofs Co. Ltd. v. Union of India, (1963) 3*

SCR 978 : AIR 1963 SC 1474] when it was observed as follows: (AIR pp. 1476-77, paras 7-8)

"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 things 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 any 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 the 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 words "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 6¼ 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 (if 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 example) 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 concerns 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 a 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 purpose of contribution by Section 6 and the real exceptions therefore in clause (ii) are the other exceptions besides dearness allowance, which has been included through Section 6."

17. *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. v. Workmen [Muir Mills Co. Ltd. v. Workmen, AIR 1960 SC 985] observing: (AIR p. 988, para 11)*

"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". …"***

18. *In* ***Manipal Academy of Higher Education v. Provident Fund Commr. [Manipal Academy of Higher Education v. Provident Fund Commr., (2008) 5 SCC 428 : (2008) 2 SCC (L&S) 114] , relying upon Bridge and Roofs case [Bridge & Roofs Co. Ltd. v. Union of India, (1963) 3 SCR 978 : AIR 1963 SC 1474] it was observed: (SCC pp. 434-35, para 10)***

"10. The basic principles as laid down in Bridge and Roofs case [Bridge & Roofs Co. Ltd. v. Union of India, (1963) 3 SCR 978 : AIR 1963 SC 1474] 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."

19. *The term "basic wage" has not been defined under the Act. Adverting to the dictionary meaning of the same in* ***Kichha Sugar Co. Ltd. v. Tarai Chini Mill Majdoor Union [Kichha Sugar Co. Ltd. v. Tarai Chini Mill Majdoor Union, (2014) 4 SCC 37 : (2014) 1 SCC (L&S) 773] , it was observed as follows: (SCC pp. 40-41, paras 9-10)***

"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."*

21. *Applying the aforesaid tests to the facts of the present appeals, no material has been placed by the establishments to demonstrate that the allowances in question being paid to its employees were either variable or were linked to any incentive for production resulting in greater output by an employee and that the allowances in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the opportunity. In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to*

> *the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusions of facts. The appeals by the establishments therefore merit no interference. Conversely, for the same reason the appeal preferred by the Regional Provident Fund Commissioner deserves to be allowed."*

23. The petitioner further relies upon the judgment of this High Court reported in ***(2006) 1 CHN 547 Gurbir Kaur Versus RPFC & Ors.***

> *"26. On perusal of the order impugned, this Court finds that the basis of computation under S. 7A of the said Act by the concerned authority has not been disclosed in the impugned order.* ***Without giving details of the employees, ie., the number of the employees and their respective salaries, no computation can be made by the concerned authority.***
>
> ***27. In the impugned order, the said particulars are very much lacking. As such, such an order cannot be held to be a reasoned order. This order, in my view, is absolutely a non-speaking order.*** *This Court also records its inability to verify the correctness of the computation with reference to the number of employees in the concerned /establishment and their respective salaries. Unless these particulars or computation are given, one cannot verify the correctness of the computation.*
>
> ***28. No doubt it is true that the primary obligation to disclose such particulars lies with the employer but even then the authority cannot shirk its responsibility to disclose those particulars in the order, so that the employer can verify the correctness of such computation.***

> *When the concerned authority determined the liability of the petitioner under S. 7A of the said Act on verification of the relevant records of the petitioner, the concerned authority cannot proceed on surmise and conjecture.* ***Non-disclosure of such particulars in the order leads to the conclusion that the decision arrived at, was based on surmise and conjecture."***

24. The petitioner submits that the impugned orders under Section 7A and 7B of the EPF Act do not disclose any basis whatsoever for calculation of wages and contribution liability thereto **without identification of employees** and components of wages attracting the mischief of liabilities, no contribution dues can be assessed.

25. On the other hand the respondents have reiterated their case but not relied upon any judgments in their favour.

26. The relevant extract of the impugned order under Section 7A of EPF Act is as follows:-

> *"I have gone through the documents filed of the case and have also considered the arguments and counter arguments so advanced by the establishment as well as by the department and by applying my mind is of the opinion that -*
>
> ***i)*** *The employer concerned has already started Provident Fund compliance w.e.f. 1.1.1997 and deposited Provident Fund dues in respect of regular employees. But the plea taken by them for non-effecting Provident Fund compliance in respect of other sets of employees can not be acceded to as the statute itself has cast the responsibility upon the employer for effecting Provident Fund compliance in respect of all the eligible employees of the establishment ever engaged as*

Casual/Temporary/Contract etc. from the very date of joining to the establishment.

ii) *As regards Provident Fund compliance on the payment of Incentive and Production Bonus. In the instant case since Provident Fund contributions and other allied dues in respect of the employees have already been deposited treating those payments as Provident Fund wages, the same benefits 'to the employees cannot be reduced from subsequent periods which is contrary to the statutory provisions u/s. 12 of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952. Although payment of incentive and Production Bonus itself otherwise attracts Provident Fund liabilities as the payments camed by the employees for extra production during normal duty hours is extra wages and subject to Provident Fund compliance."*

27. In respect of the impugned order under Section 7B of the Act, the authority in review held:-

> *"........As has been seen earlier, the establishment was mandatorily required to make contributions from 01/97 onwards. This fact had even been accepted by the respondents albeit only for regular employees. It is notable that' even for the regular employees, the respondent establishment hadn't deducted the dues during the earlier period, but subsequently, payments were made by them in lump-sum. Thus in this light the only issue left to be decided was as regards the contributions of contracted employees and the deductions on wage components like "Production Bonus" and "Incentive", which for reasons already explained, have beer decided earlier. In this light the report's reliance on the aforesaid two aspects of non-deduction during the prediscovery period and retrospective application of section 12, is grotesque and not legally untenable. Lastly, with respect to the respondent establishment's non-receipt of separate summons for imposing penal interest liability, I am of*

> *the view that calculation of the liability under section 7Q is automatic, once the actual statutory liability has been established established."*

28. Accordingly, in view of the judgment in ***Vivekananda Vidyamandir (Supra)*** this Court finds that the decision of the respondent authority being the Assistant Provident Commissioner, Regional Office, Kolkata in the impugned order dated 3.8.2007 under Section 7A of the EPF Act is not in accordance with law, as the respondent authority has calculated the dues on holding that payment of incentive and production bonus attracts provident fund liabilities as the same is to be treated as extra wages.

29. Incentive and production bonus does not form part of basic wages and is thus not liable to be included for provident fund contribution.

30. The fact that the petitioner deposited contribution for a short period under a misconception and subsequently rectified the same by making the proper contribution cannot be held against the petitioner. The said findings of the authority is totally against the principles laid down by the Hon'ble Supreme Court in ***Vivekananda Vidyamandir (Supra).***

31. In respect of the finding of the authority that admittedly the petitioner has been depositing provident fund dues in respect of regular employees with effect from 1.1.1997, it appears that the authority concerned has noted therein that the petitioner is not complying with the same in respect of other sets of employees engaged as casual/temporary/contract etc. and has stated that the petitioner is liable to deposit the said contribution in respect of such staff from the date of their joining the establishment.

32. The petitioner's contention is that there is no such staff employed with its establishment and as such the question of such deposit does not arise. Relying upon the judgment of the High Court in ***Gurbir Kaur (Supra)*** this Court finds that the respondent authorities herein including the enforcement officer in its report, have not disclosed the details of such employee. No such particulars have been provided either in the report or the impugned orders and as such the order in respect of such direction cannot be held to be a reasoned order. It further appears that without providing such particulars, the authority has proceeded to compute the dues as claimed from the petitioner in respect of such employees.

33. It is doubtful as to from where and how such computation has been made and without any details is not possible to verify the correctness of the computation. The authority in the present case has proceeded to determine the liability of the petitioner in respect of such employees whose details have been not noted either in the report of the enforcement officer nor in the impugned order and as such the conclusion arrived at by the respondent authority in respect of the said issue is vague and without any basis. Accordingly, the same being not in accordance with law is liable to be set aside.

34. Considering the said facts the impugned orders under Section 7A of the EPF act and the order of review under Section 7B of the EPF act which affirms the order under Section 7A suffering from inherent illegality and being not in accordance with law are hereby **set aside.**

35. **WPA 10361 of 2011 is allowed.**

36. Connected application, if any, stands disposed of.

37. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul), J.]