



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

CWP-20589-2011 (O&M)

Reserved on: 31.10.2025

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M/s. Xpro India Limited

....Petitioner

Versus

The Employees' Provident Fund Appellate Tribunal (Ministry of Labour and Employment, Government of India), and others

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Pawan Kumar Mutneja, Senior Advocate, with
Ms. Suverna Mutneja, Advocate, and
Ms. Harmanjot Kaur, Advocate,
for the petitioner.

Mr. Sandeep Goyal, Advocate,
for respondents No.2 and 3.

KULDEEP TIWARI, J. (Oral)

1) The petitioner-company, by instituting the present writ petition under Article 226 of the Constitution of India, has questioned the legality of the order dated 24.12.2007 (Annexure P-4), passed by the Regional Provident Fund Commissioner-respondent No.2, and also the order dated 01.09.2011 (Annexure P-6), rendered by the Employees' Provident Fund Appellate Tribunal-respondent No.1.

Factual Matrix

2) Succinctly put, the petitioner-Company manufactures plastic films and sheets, and is registered under the Companies Act. With the aid of CCTS Module, an exponential drop in remittance from March, 2005 onwards, came to light. Accordingly, an enquiry, in sync with Section 7A



of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for short, 'the Act of 1952'), was initiated against the petitioner-Company. As a result, the amounts, as described below, were assessed to be deducted/deposited by the petitioner-Company on account of Provident Fund contribution: -

- 1) Special allowance from March, 2003, to January, 2006, valuing Rs.27,73,866/-;
- 2) Emoluments to the tune of Rs.5,30,872/-, as paid towards tea/canteen allowance for March, 2003, to January, 2006; and
- 3) A sum of Rs. 58,66,553/-, as paid to the employees on account of extra wages/over time allowance from March, 2003 to January, 2006.

3) Resultantly, upon consideration of the matter, respondent No.2, by drawing the impugned order dated 24.12.2007 (Annexure P-4), assessed an amount of Rs.3,02,649/-, to be paid by the petitioner-Company on account of special allowance and tea/canteen allowance for the period spanning from March, 2003 to January, 2006. However, the amount, which was paid by the petitioner-Company to the employees as overtime/extra wages, was found well within the exceptions enshrined in the definition of the basic wages, under Section 2(b) of the Act of 1952.

4) Aggrieved by the aforesaid order, the petitioner-Company moved the learned Appellate Authority by preferring a statutory appeal, which, as indicated above, was dismissed, vide order dated 01.09.2011 (Annexure P-6). So much so, it was held that since no document was filed to indicate that the petitioner-company had obtained the necessary permission from the competent authority to engage employees beyond



the scheduled working hours, therefore, the emoluments paid under the head of overtime/extra wages, would also be required to be assessed for the purpose of Provident Fund contribution. That is how, the petitioner is before this Court.

Submissions

5) Learned Senior counsel for the petitioner, at the outset, submitted, that admittedly, the Department concerned has not preferred any appeal against the order passed by respondent No.2, therefore, the learned Tribunal ought to have refrained itself from including the emoluments under the head of overtime/extra wages, for the purpose of Provident Fund deduction. Thus, on this score alone, the appellate order is liable to be set aside. Not only that, apparently, the Appellate Authority passed a cryptic order, as none of the contentions raised on behalf of the petitioner-Company, were considered.

6) In an endeavour to persuade this Court, he asserted that, no such provision exists in the Act of 1952, which obligates the petitioner-Company to deduct/deposit the contribution for the emoluments paid under the head of special allowance. In fact, the said allowance was being paid by the petitioner-Company, at its own discretion, to certain employees, therefore, the same, by any stretch of imagination, could not be linked with basic wages, dearness allowance or retaining allowance. Further, the said allowance was introduced by the petitioner-Company, vide a circular dated 26.11.1999, which was also taken note of, by respondent No.2 in its order dated 24.12.2007. While referring to the said circular, it was submitted that the special allowance was not paid at any uniform rate, but was paid according to the status/designation of the



employees. Suffice to say, the said allowance was being paid only to the staff members (Clerical, Supervisors, Managers and Senior Executives of the Company), and not to the workman category. A large number of employees, who were getting the benefit of the said allowance, were having their basic salary beyond Rs.6,500/- per month. In such circumstances, the petitioner-Company cannot be held liable to deposit contribution on account of payment made under the abovesaid head. To lend credence to his submissions, he relied upon the verdicts rendered by the Hon'ble Supreme Court in **Bridge and Roofs Co., Ltd. Vs. Union of India and others, (1963) 3 SCR 978;** and **Regional Provident Fund Commissioner (II) West Bengal Vs. Vivekananda Vidyamandir and others, 2019 SCC OnLine SC 291.**

7) While moving to the second issue, it was urged that the emoluments remitted under the head of tea/canteen allowance, also falls within one of the exceptions provided under Section 2(b) of the Act of 1952. Further, per clause 13 of the Tripartite Settlement dated 12.11.2001, the canteen allowance @ Rs.200/- per month was required to be paid to all the permanent workmen w.e.f. 01.04.2001, with an addition of Rs.31/-. However, the same would be subject to withdrawal, on extending the facility of canteen. In order to substantiate his plea, he referred to a decision of the Gujarat High Court in **Reliance Industries Ltd. Vs. Regional Provident Fund Commissioner, Vadodara and another, 2011 SCC OnLine Guj 7625,** and also a verdict dated 16.07.2008, rendered by the Bombay High Court in **Tata Power Company Limited, Mumbai Vs. Regional Provident Fund Commissioner, Mumbai and others,** (W.P. No.2500 of 2005).



8) So far as the third issue is concerned, it was averred that, the overtime allowance too, is absolutely exempted under Section 2(b) of the Act of 1952. Since the petitioner-factory undertakes continuous manufacturing operations, the workmen manning the machines cannot leave their place of work until the workmen of next shift would take charge. In this way, they are required to work overtime, for which, they would be paid double of the ordinary one day wage, as per the Factories Act. In this regard, the Chief Inspector of the Factories, Haryana, vide order dated 04.01.1990, granted exemption to the petitioner-Company from the provisions of Sections 51, 52, 54 to 56 of the Factories Act. However, only such workers, who put in extra hours of work, are entitled to get overtime wages, as per the provisions of the Factories Act.

9) *Per contra*, learned counsel for the respondents vehemently contended that the special allowance is no more than a dearness allowance, and thus, in view of Section 6 of the Act of 1952, it is required to be assessed for the purpose of contribution of Provident Fund. Likewise, he asserted that tea/canteen allowance is covered under the cash value of food concession, and therefore, it does include in the dearness allowance, as per explanation attached to Section 6.

10) No other argument was raised.

Analysis

11) Before embarking upon the submissions advanced on behalf of the parties, and scrutinizing the order impugned herein, a glimpse of the provisions of the Act of 1952, which are germane to set the controversy at rest, is expedient.



12) To begin with, the term ‘basic wages’ as defined in Section 2(b), postulates, all emoluments, as earned by an employee, while on duty or on leave or holidays with wages in either case, in accordance with terms of the contract of employment, and which are paid or payable in cash to him. However, the cash value of any food concession; any dearness allowance, house-rent allowance, overtime allowance, bonus commission of any other similar allowance payable to the employee in respect of his employment or of work done in such employment; and any presents made by the employer, are exempted from the definition of basic wages. For ready reference, the abovesaid definition is extracted hereinafter:-

“(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;”

13) Section 6 deals with contributions and matters which may be provided for in Schemes:-

“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 per cent] 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 per cent.] 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]:

xx xx xx xx

xx xx xx xx

[Explanation 1].—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.

xx xx xx xx”

14) By virtue of the abovesaid provisions, the intent is to mandate unequivocally that contribution which shall be paid by the employer to the Fund shall be 10% of the basic wages, dearness allowance and retaining allowance, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him. Pertinently, the first explanation, referred to above, makes it vivid that cash value of any food concession allowed to the employee shall be deemed to be included in the dearness allowance.

15) Proceeding further with the discussion on the issue, Section 2(b), which defines, 'basic wages', excludes certain earnings, though they must be earned by employees, in accordance with the terms of the contract of employment. Interestingly, 'dearness allowance' is excluded from Section 2(b), but the same is included for the purpose of contribution by the dint of Section 6. Therefore, with a view to discover



some rationale for the exclusion in Section 2(b) and inclusion of dearness allowance and retaining allowance in Section 6, the Hon'ble Supreme Court in **Bridge and Roofs Co. Ltd. (supra)**, carved out a principal of universality, to the effect that **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.** In this regard, the relevant observations made in the judgment (**supra**), are as under:-

“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 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 wage. 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 purpose 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

16) Taking a step ahead the deliberations on the issue, the Hon'ble Supreme Court, in **Manipal Academy of Higher Education Vs. Provident Fund Commissioner, (2008) 5 SCC 428**, jotted down the abovesaid basic principle:-

“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.”

17) Furthermore, the Hon'ble Supreme Court in **Vivekananda Vidyamandir and others (supra)**, held that 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 nexus to the payment of such special allowance, as not being common to all. The crucial test is one of universality. Though, with the abovesaid observations, the sum and substance of the matter is manifestly clear, but it would be expedient to have a look at the relevant observations made in the decision (supra):-

“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 s. 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 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", s. 6 then provides for inclusion of dearness allowance for purposes of contribution. But that is clearly the result of the specific provision in s. 6 which lays down that contribution shall be 6 1/4 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 s. 6. It seems that the basis of inclusion in s. 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 s. 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 s. 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 s. 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 s. 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 s. 6 and the real exceptions therefore in clause (ii) are the other exceptions beside dearness allowance, which has been included through S. 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 Vs. 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"..."

18) As a sequel of the position sketched out above, this Court is of the considered view that the learned Appellate Authority, while contemplating the decision arrived at, not only failed to consider the quintessential principles, as laid down by the Hon'ble Supreme Court (**supra**), but also failed to determine the crucial issue, as to whether, the special allowance could be termed as dearness allowance. Therefore, on this aspect, the order passed by the learned Appellate Authority inevitably attracts interference of this Court.

19) Adverting to the next issue, as to whether, a direction passed in the impugned order to make contribution on the amount paid under the tea/canteen head, has a capability to withstand the test of legal scrutiny or not?

20) Per sub-clause (i) (b) of Section 2 of the Act of 1952, the cash value of any food concession is excluded. However, the cash value of any food concession allowed to the employee is included in dearness allowance for the purpose of assessing the contribution, in terms of first explanation attached to Section 6.

21) In this direction, the Gujarat High Court, in **Reliance Industrial Limited (supra)**, also examined the scope of the issue, exhaustively. It has been held that while excluding any dearness allowance or any such cash payment from the purview of basic wages, the Legislature has made it crystal clear that it must be on account of a



rise in the cost of living. If it is not connected with any increase in the cost of living index, the same cannot be said to be a cash value of any food concession and thus, is not liable to be included in dearness allowance. The observations, in this regard, are as under:-

“25. Having heard the learned Counsels for the parties and having considered the rival submissions in light of the statutory provisions as well as the decided case-law on the subject, the Court has to decide the basic issue raised before it. The issue raised is, whether the canteen subsidy of Rs. 475-00 per month given to the employees of the petitioner pursuant to the settlement dated 9th August 1995 can be said to be the cash value of any food concession and whether it falls within the Explanation 1 to, section 6 of the said Act and, therefore, it is deemed to be dearness allowance, for which, deduction towards the provident fund contribution should be made. To appreciate this issue in its any food concession is specifically excluded from the definition of basic wages. Likewise, dearness allowance is also excluded from this definition. Thus, the cash subsidy is not required to be examined with reference to the definition of basic wages. It, however, appears that the legislative intention of excluding the cash value of any food concession and dearness allowance is only because a corresponding provision is made in Explanation 1 to section 6 of the said Act. Section 6 of the said Act deals with contributions and matters which may be provided for in scheme. It talks of the contributions to be made by the employer to the fund on the basic wages, dearness allowance and retaining allowance, if any. Explanation 1 to section 6 of the said Act creates a deeming fiction. It says that for the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employees. Thus, the question arose before the Court is whether the canteen subsidy of Rs. 475-00 per month paid by the petitioner to its employees can be said to be the cash value of any food concession and if it is so, it would amount to dearness allowance



on which provident, fund contributions are required to be made by the petitioner.

26. The settlement was arrived at between the petitioner and the representative union on 9th August 1995. Clause 17 of the settlement deals with canteen subsidy. It says that the existing rate of canteen subsidy shall be increased from Rs. 300-00 per month to Rs. 475-00 per month effective from 1st July 1995. Due to the Increase in canteen subsidy amount, the rates of eatables made available in canteen facilities will be suitably revised at the respective locations in consultation with the union. All other terms and conditions for the grant of aforesaid amount remains unchanged. It is the case of the petitioner right from the beginning that the nature of payment of canteen subsidy to its employees is totally different and is not a cash value of any food concession as understood and explained in Explanation 1 to section 6 of the said Act. It is noticed from the pleadings that the petitioner had earlier provided canteen subsidy as prescribed under the Factories Act, operative on 'no profit no loss' basis, thereby only those who desire to avail such facilities profit use to take lunch/shacks during the working hours by exchanging coupons of subsidized value. All the employees were not availing this facility. Employees availing this facility were allowed to consume such eatables at their work place only and such eatables were not allowed to be carried outside. Since the non-supervisory employees posted outside the complex were not having such subsidized facility, they were paid Rs. 3-00 per day in lieu of such subsidized facility. This amount was not in the nature of cash value of any food concession as envisaged in the Act or the scheme framed thereunder. Initially, all employees posted outside the plant premises, where subsidized canteen facilities were not available were given cash canteen subsidy in lieu of subsidized canteen facility. However, employees posted inside the plant premises, where subsidized canteen facilities wereof increase in the cost of living Index but is purely in the nature of reimbursement of part of expenses incurred while at work for food and tea/coffee during working hours. The payment of canteen subsidy remain constant and would not vary (either



increase or decrease) along with the change in the cost of living index. Thus, while excluding any dearness allowance or any such cash payment from the purview of basic wages, the Legislature has made it very clear that it must be on account of a rise in the cost of living. If it is not linked up with any increase in the cost of living index, it cannot be said to be a cash value of any food concession and hence it cannot be included in dearness allowance. Another issue which is made very clear by the decision of the Apex Court in Manipal Academy of Higher Education (supra) is that the test of universality must also be satisfied. The cash value of food concession would fall within its ambit only if food items given by some employers are part of wages, when wages are paid partly in cash and partly in kind. Only in such cases, cash value of any food concession can form part of wages as envisaged in the Act or the scheme. Canteen subsidy in the petitioner's case is not an item of that nature.”

22) Reverting to the facts of the case at hand in context of the issue in question, the circular, as referred to above by the learned Senior counsel, unambiguously clarifies that the emoluments paid to the employees on account of tea/canteen allowance, are subject to withdrawal, as and when the canteen facility is provided within the premises of the company. On the anvil of the above, one of the key issues, i.e. whether the tea/canteen allowance can be linked and included under the head the dearness allowance, ought to have been considered by the Appellate Authority, specifically when the same is payable to a defined class of workmen, and not to all the employees. Hence, on this aspect as well, the order passed by the learned Appellate Authority is unsustainable.

23) This brings us to the issue of overtime/extra wages, which has been excluded by respondent No.2. Concededly, no cross appeal, at



the instance of the Department, has been preferred. In such a situation, this Court is of the considered opinion that the Appellate Authority had no occasion, whatsoever, to include such emoluments for the purpose of contribution towards Provident Fund.

24) In conspectus of the abovesaid narration of facts, coupled with the ratio laid down in the verdicts, as demonstrated above, the only conclusion this Court could cull out is: the order passed by learned Appellate Authority suffers from a patent illegality, and thus, the same is **set aside**. Consequently, the matter is remitted to the learned Appellate Authority concerned, for decision afresh, in accordance with law.

25) Given the plight of the present case, as it has been hanging fire since 2011, a Mandamus is passed upon the learned Appellate Authority concerned, to conclusively decide the matter, within four months from the receipt of a certified copy of this order, after affording due opportunity of hearing to the parties concerned.

26) With the abovesaid observations, the instant writ petition stands **disposed of**.

(KULDEEP TIWARI)
JUDGE

28.01.2026
Ak Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No