



## Supreme Court ruling on the applicability of Provident Fund contributions on allowances

### Background

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) mandates<sup>1</sup> that the contribution towards Provident Fund (PF) will be calculated on monthly pay comprising the following components:

- Basic wages<sup>2</sup>
- Dearness allowance (all cash payments by whatever name called paid to an employee on account of a rise in the cost of living)
- Retaining allowance
- Cash value of any food concession

However, 'basic wages' does not include cash value of any food concession, Dearness allowance, House rent allowance, Overtime allowance, Bonus, Commission or any other similar allowance payable to an employee in respect of his employment, any presents made by the employer.

<sup>1</sup> Section 6: The contribution which shall be paid by the employer to the Fund shall be twelve percent of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employee's 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 twelve percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

<sup>2</sup> Section 2(b): 'basic wages' means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

- (i) the cash value of any food concession;
- (ii) any dearness allowance that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living, house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- (iii) any presents made by the employer.

### Facts of the case

Multiple appeals<sup>3</sup> before the Supreme Court raised a common question of law whether the other allowances (such as travel allowance, canteen allowance, special allowance, management allowance and conveyance allowance, etc) paid by an establishment to its employees would fall within the expression 'basic wages' for computation of contribution towards Provident Fund.

### Petitioners'/Employers' contention

- The common submission on behalf of the petitioners in the appeals was that the term 'basic wages' contains exceptions and will not include what would ordinarily not be earned in accordance with the terms of the contract of employment.
- Even with regard to the payments earned by an employee in accordance with the terms of contract of employment, the basis of inclusion in Section 6 and exclusion in Section 2(b)(ii) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose of contribution.

<sup>3</sup> a) The Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidyamandir And Others, Civil Appeal No. 6221 of 2011

- b) Surya Roshni Ltd. v. Employees Provident Fund and Others, Civil Appeal Nos. 3965-66 of 2013
- c) U-Flex Ltd. v. Employees Provident Fund and Another Civil Appeal Nos. 3969-70 of 2013
- d) Montage Enterprises Pvt. Ltd. v. Employees Provident Fund and Another, Civil Appeal Nos. 3967-68 of 2013
- e) The Management of Saint-Gobain Glass India Ltd. v. The Regional Provident Fund Commissioner, Employees' Provident Fund Organisation, Transfer Case (C) No.19 of 2019 (arising out of T.P. (C) No. 1273 of 2013)

But, whatever is not payable by all concerns or may not be earned by all employees of a concern are excluded for the purposes of contribution.

- It is only those emoluments earned by an employee in accordance with the terms of employment which would qualify as basic wage and discretionary allowances not earned in accordance with the terms of employment would not be covered by basic wage.
- The statute itself excludes certain allowance from the term basic wages.

## PF department's contention

- The EPF Act is a social beneficial welfare legislation meant for protection of the weaker sections of the society.
- Under Section 6 of the EPF Act, the appellant is liable to pay contribution to the provident fund on basic wages, dearness allowance, and retaining allowance (if any).
- In order to exclude any incentive wage from basic wage, it should have a direct nexus and linkage with the amount of extra output.
- Section 2(b)(ii) defined dearness allowance as all cash payment by whatever name called paid to an employee on account of a rise in the cost of living. The allowance shall therefore fall within the term dearness allowance, irrespective of the nomenclature, if being paid to all employees on account of rise in the cost of living.

## Supreme Court ruling

The Supreme Court in its ruling examined and discussed the following judgements:

- Whatever is payable in all concerns and is earned by all permanent employees is included for the purpose of contribution, 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<sup>4</sup>;
- Any variable earning which may vary from individual to individual according to their efficiency and diligence will stand excluded from the term 'basic wages'<sup>5</sup>;

<sup>4</sup> Bridge and Roof Co. (India) Ltd. v. Union of India, (1963) 3 SCR 978

<sup>5</sup> Muir Mills Co. Ltd., Kanpur v. Its Workmen, AIR 1960 SC 985

- Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages<sup>6</sup>;
- 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. Such wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage<sup>7</sup>;
- EPF Act is a beneficial social welfare legislation and must be interpreted as such<sup>8</sup>;

After examining the above judicial precedents the Supreme Court reached the following conclusions:

- If any amount is to be excluded from the basic wages, it has to be shown that the employee had become eligible to get this extra amount beyond the normal work which he/she was otherwise required to put in.
- No material had 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.
- The wage structure and the components of salary had been examined on facts, both by the authority and the appellate authority under the EPF Act, who had arrived at a 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. Hence, appeals by the establishments merit no interference.

## Our comments

This is an important ruling which may have significant implications for establishments covered under the EPF Act employing both domestic employees and International Workers.

This ruling should help the employers in determining the salary for the purpose of PF. Employers may need to revisit their policies and documentation in relation to employee compensation to ensure compliances with the regulations under the EPF Act.

<sup>6</sup> Manipal Academy of Higher Education v. Provident Fund Commissioner, (2008) 5 SCC 428

<sup>7</sup> Kichha Sugar Company Limited through General Manager v. Tarai Chini Mill Majdoor Union, Uttarakhand, (2014) 4 SCC 37

<sup>8</sup> The Daily Partap v. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh, (1998) 8 SCC 90

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