



Madras High Court ruling on the applicability of Provident Fund contributions on Special allowance

Background

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) mandates¹ that the contribution towards Provident Fund (PF) will be calculated on monthly pay comprising the following components:

- Basic wages²
- 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 and any presents made by the employer.

Facts of the case

The appeal³ before the High Court raised a question whether the special allowance paid by an establishment to its employees would fall within the expression 'basic wages' for computation of contribution towards Provident Fund.

Madras High Court ruling

The Madras High Court in its ruling examined and discussed the following principles and judgements:

- 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 wage⁴;
- EPF Act is a beneficial social welfare legislation and must be interpreted as such⁵;

¹ 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.

² 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-

- the cash value of any food concession;
- 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;
- any presents made by the employer.

³ DTDC Courier and Cargo Ltd. vs. The Regional Provident Fund Commissioner, EPFO and Ors. W.P. No. 15131 of 2011, M.P. Nos. 1 and 2 of 2011 Decided On: 12.11.2019

⁴ Kichha Sugar Company Limited through General Manager vs Tarai Chini Mill Majdoor Union, Uttarakhand, (2014) 4 SCC 37

⁵ The Daily Partap vs The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh, (1998) 8 SCC 90

The Court also quoted the following observations of recent Supreme Court ruling⁶:

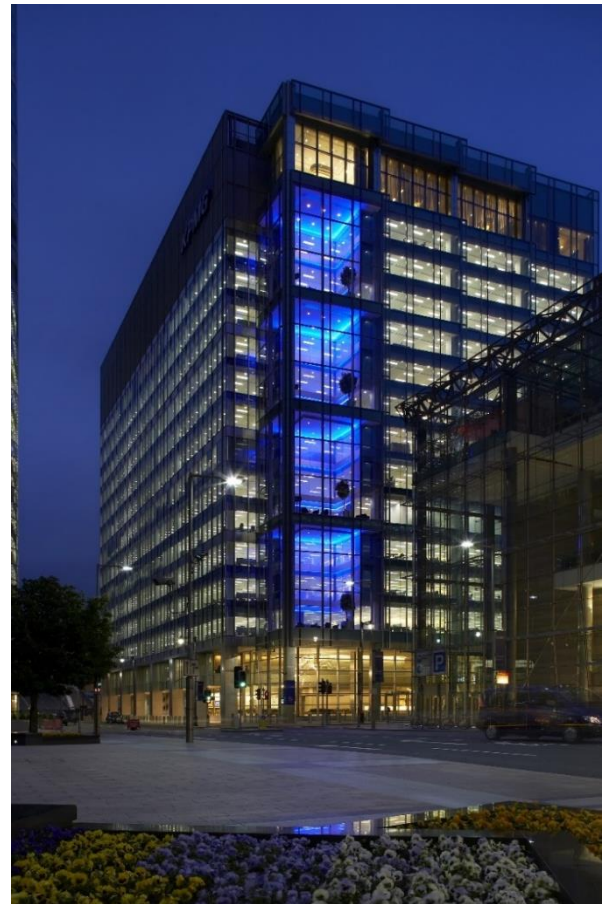
- If any amount is to be excluded from the basic wages, it has to be shown that the employee had become eligible to get this extra amount beyond the normal work which he/she was otherwise required to put in.
- Any wages which are paid universally, necessarily and ordinarily to all employees across the board are basic wages.
- 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.

The court held that in view of the judgment of the Supreme Court of India, the claim of the establishment cannot be considered, and they are liable to pay the contributions by including the special allowances along with the basic wages, accordingly, the writ petition is devoid of merits and stands dismissed.

Our comments

This is an important ruling subsequent to Supreme Court judgement 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.



⁶ The Regional Provident Fund Commissioner (II) West Bengal vs Vivekananda Vidyamandir And Others, Civil Appeal No. 6221 of 2011

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