

The Regional Provident Fund Commissioner (II) West Bengal vs. Vivekananda Vidyamandir & Ors (Civil Appeal No(s) 6221 of 2011)

March 04, 2019

BRIEF BACKGROUND

1. There was lot of ambiguity, as to the nature of allowances which were to be excluded from the definition of *Basic Wages* under the Act. The High Courts of Madras and Madhya Pradesh held that considering the legislation is in the nature of social welfare legislation, an interpretation should be given which furthers the intention of the legislature.
2. The High Court of Madhya Pradesh (**Surya Roshni vs EPF & Anr. WP (C) No. 1891 of 2011**) refused to interfere in the orders of the Commissioner wherein Conveyance and Special allowances were included in the definition of the basic wages.
3. Taking a contrary view, High Court of Calcutta (**RPFC vs Vivekanand Vidya Mandir and Anr; 2005 ILLJ 721, Calcutta**) opined that the Special allowance is not included in the definition of Basic Wages.
4. Finally, all the above cited judgments have been considered and disposed off by the Hon'ble Supreme Court in the matter of **The Regional Provident Fund Commissioner (II) West Bengal vs. Vivekananda Vidyamandir &Ors (Civil Appeal No(s) 6221 of 2011)**

RELEVANT PROVISIONS OF THE ACT

(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;

SECTION 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 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 ten 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:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "ten percent", at both the places where they occur, the words "12 percent" shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off of such fraction to the nearest rupee, half of a rupee, or quarter of a rupee.

Explanation I – 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.

Explanation II. – For the purposes of this section, “retaining allowance” means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.

FINDINGS AND OBSERVATIONS OF THE COURT

1. The Hon’ble Supreme Court held that 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.
2. It further opined that 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.
3. Applying and reiterating the test laid down by the Hon’ble Supreme Court in its earlier decision of Bridge and Road Co Ltd (1963) 3 SCR 978, the Hon’ble Supreme Court opined that the test to be adopted for the exclusion of payment from basic wage is that the said payment must have direct access and linkage to the payment of such special allowance not being common to all.
4. The Hon’ble Supreme Court also considered its earlier decision rendered in Manipal Academy of Higher Education vs. Provident Fund Commissioner (2008) 5 SCC 428 and reiterated that the wage which is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.
5. Applying the above tests, the Hon’ble Supreme Court came to the conclusion that the establishments in the Appeals failed to demonstrate that 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 allowances in question were not paid across the board to all employees in a particular category. The Supreme Court proceeded to dismiss the Appeals filed by the establishment and allowed the Civil Appeal No. 6221 of 2011 preferred by the Regional Provident Commissioner.

ELP ANALYSIS AND OBSERVATIONS

- I. It is a common practice among the companies to provide a Salary break-up to its employees. The said salary break-up usually contains a basic wage component and the remaining salary consists of special allowances paid under different heads such as education allowance, conveyance allowance, medical allowance etc. As a matter of practice, the Companies usually contribute their share of Provident Fund only on the basic wage component.
- II. After the present judgment, it may not be possible for the Companies to adopt the above approach, as the special allowance (irrespective of the terminology used) paid by the Companies will also form part of basic wage, if the same is paid across the board to all employees.
- III. Further, if the special allowance being offered by the Companies does not have a direct nexus and linkage with the output by the eligible workmen, the same will also form part of the basic wage.

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