

Whether special allowances part of basic wage for computation of deduction towards Provident Fund? – Supreme Court of India

written by Pathik Choudhury | May 15, 2019

The

bench comprising of Justice Arun Mishra and Justice Navin Sinha of the Hon'ble

Supreme Court of India has passed a landmark judgment in the case of *The Regional Provident Fund Commissioner (II) West Bengal V. Vivekananda Vidyamandir & Others* in which the Hon'ble Court has dealt with the question on whether special allowances fall within the the purview and meaning

of "basic wages" under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (Hereinafter referred as the "EPF Act, 1952"). The Hon'ble

Apex Court has held that the allowances which are paid to the employees universally and uniformly shall come within the definition of "basic wages" under the EPF Act, 1952 for the purpose of calculating provident fund under the

EPF Act, 1952 and those allowances which are paid to an employee as an incentive for doing some additional work resulting in greater output, which is

not paid universally to all employees shall be excluded from the definition of

"basic wages". The Hon'ble

Supreme Court judgement clearly says that unless allowances beyond basic pay are variable in nature or linked to "any

incentive for production" they must be treated as part of the total basic salary and not be "camouflaged" by

the employer to avoid contribution towards Provident Fund.

BACKGROUND

In

this matter, the Hon'ble Supreme Court of India had jointly heard a batch of five appeals^[1]

which arose from various Hon'ble High Courts of the country. The common question which evolved in these appeals was whether allowances including special allowances could come within the definition of "basic wages" as defined

under Section 2(b) read with Section 6 the EPF Act, 1952 for the purpose of determining provident fund liability of an employer.

It

was argued by the appellants that the emoluments earned by an employee as per the terms and conditions of employment should qualify as basic wage.

Allowances

which are not earned in accordance with the terms and conditions of employment

and are given to an employee for doing some additional work should not be termed as basic wage.

ARGUMENTS PLACED BY

COUNSEL OF PROVIDENT FUND ORGANIZATION

The

Counsel representing Provident Fund Organization had contended that the

special

allowance which was paid to the employees was nothing but camouflaged dearness

allowance liable to be deducted as per of basic wage. Under Section 2(b)(ii) of

the EPF Act, 1952, dearness allowance is defined as all cash payment by whatever name called which is paid to an employee for the purpose of rise in the cost of living. In this present case, the allowance was paid to all employees for the purpose of rise in the cost of living. The allowance paid to

the employees had all the characteristics of dearness allowance and thus liable

to be deducted as part of "basic wage".

ARGUMENTS PLACED AGAINST

PROVIDENT FUND ORGANIZATION

The

appellants contended that basic wages defined under Section 2(b) of the EPF Act, 1952 contains exceptions and will not include something which is not ordinarily earned as per the terms and conditions of the employment agreement and discretionary or special allowances which is not earned as per the terms and conditions of the employment contract shall not be included under "basic wage".

JUDGMENT

The

Hon'ble Supreme Court has held that the allowances which are universally paid to all employees across the board shall come under the definition of basic wages and shall not be termed as special allowance. An employer needs to establish that an employee has worked beyond his normal work and has put in extra effort and therefore became eligible to get extra amount which can be termed as special allowance. The Hon'ble

Court has relied upon certain judgments while deciding this issue. The Hon'ble

Court has reiterated the principle laid down in the case *Bridge and Roof Co. (India) Ltd.*

V. Union of India[2] where it was held that the

allowances which are not payable by all concerns and not earned by all employees

of that concern shall be excluded from the definition of "basic wages" The Hon'ble Court has further relied upon the judgment passed in the case *Manipal Academy of Higher Education V. Provident Fund Commissioner*[3]

where it was held that emoluments which are paid universally shall fall within

the meaning of "basic wages", whereas, the payment which is specially availed by way of special incentive shall not be treated as part of basic wage.

The

Hon'ble Apex Court, through this landmark judgment has made it effectively clear that an employer in order to avoid paying necessary provident fund contributions cannot make an allowance structure from its employee's compensation.

CONCLUSION

The

Hon'ble Supreme Court of India has reaffirmed the principle laid down in the landmark judgment of *Bridge and Roof Co. (India) Ltd. V. Union of India*^[4] and has provided clarity to the ambiguities regarding what should be included and excluded from the definition

of "basic wages" for the purpose of computing employees provident fund.

Earlier

the employers used to deduct provident fund contribution only on basic wage, dearness allowance and retaining allowance but after this judgment, all special

allowances or any other allowance which are paid to all employees of the organisation shall be taken into account for the purpose of provident fund deduction unless it is linked to individual factor.

For example, prior to this judgment, if Mr. A's basic wage was Rs. 10,000 and special allowance paid to him was Rs. 15,000, then 12% used to be deducted from his basic wage towards provident fund contribution which amounts to Rs. 1,200 ($\text{Rs. } 10,000 \times 12/100 = \text{Rs. } 1,200$). However, under the new scheme, if Mr. A's basic wage is Rs. 10,000 and special allowance paid to him is Rs. 15,000, then entire Rs. 25,000 shall be treated as basic wage and 12% shall be deducted from Rs. 25,000 towards provident fund contribution which amounts to Rs. 3,000 ($\text{Rs. } 25,000 \times 12/100 = \text{Rs. } 3,000$). From now onwards, most of the allowances will be included in the employee's basic wage which will result in the increase in the amount of provident fund contribution by the employer and employee. But this would result in the decrease in the in-hand salary received by an employee. This will help an individual build a big retirement corpus but decrease in take home salary might affect the lifestyle of an individual.

Contributed by - Pathik Choudhury

^[1] *Surya Roshni Ltd. V. Employees Provident*

Fund & Others (Civil Appeal No. 3965-66/201) , *U-Flex Ltd V. Employees Provident Fund & Another* (Civil

Appeal No. 3969-70/2013), *Montage Enterprises Pvt. Ltd V. Employees Provident Fund & Another* (Civil Appeal No.3967-68/2013), *The Regional Provident Fund Commissioner*

(II) *West Bengal V. Vivekananda Vidyamandir & Others* (Civil Appeal No. 6221/2011) and *The Management of Saint-Gobain Glass India Ltd. V. The Regional*

Provident Fund Commissioner, Employees Provident Fund Organisation (Transfer Case No. 19/2019 (arising out of TP(C) no. 1273/2013)

^[2] (1963)

3 SCR 978

^[3]

(2008) 5 SCC 428

^[4] (1963) 3 SCR 978

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