Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 20/08/2026

(2011) 02 P&H CK 0289

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 15443 of 2009 (O and M)

Asstt. Provident Fund Commissioner — APPELLANT

Vs

G4S Security Services (India) Ltd. and Another — RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 7A

Citation : (2011) 130 FLR 473 : (2011) 3 LLJ 644 : (2011) LLR 316 : (2011) 162 PLR 658

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—The Petitioner impugns the order (Annexure P-5) passed by the Appellate Tribunal under the provisions of the Employees Provident Fund & Misc. Provisions Act, 1952 while determining the issue raised by the Respondents regarding its liability under the provisions of Section 7A of the Act.

2. The Respondent-Company is an establishment which is amenable to the provisions of Employees Provident Fund & Misc. Provisions Act and for the purposes of determining its contribution was taking into consideration the basic wage as given to its employees.

3. The Petitioner''s grievance is that the Respondents were splitting the wage structure of the employees as a subterfuge so as to dilute its liability and that this was contrary to the wage structure which is to be taken into consideration for the contributions to be made to the Fund under the Act. The precise grievance is that rates of minimum wages which ought to have been taken into consideration are not being done so by the Respondents and by splitting up the wage structure there is an evasion of its liability.

4. The Tribunal considered the matter and held that the Respondents were right in taking into consideration the basic wage of the employee for determining the

contribution to the Fund. The plea of the Petitioner was negated which has prompted him to file the instant writ petition.

5. It has been contended by the learned Counsel for the Petitioner that it is the minimum wage, the definition of which is provided under the Minimum Wages Act which is to be taken into consideration for determining the contribution and that the Tribunal was wrong in interpreting the provisions of law and determining the liability of the Respondents on the basis of the basic wage which was being given by the Respondents to its employees for the purposes of determining the contribution to the fund. It is his case that the Respondents have deliberately, by not including the allowances in the basic wage have sought to deflate the share of the employees contribution. Reliance has been placed on cases titled as D.C.M. Limited Vs. Regional Provident Fund Commissioner, High Court Rajasthan and Airfreight Ltd. Vs. State of Karnataka and Others, .

6. On the other hand, learned Counsel for the Respondents has stated that the definition of basic wage as given in the Act clearly provide for an exclusion clause and they have gone strictly by definition of basic wage to determine the liability of the contribution to the fund. It has further been contended that definition of wages under the Minimum Wages Act is distinct from that of the basic wage under the Employees Provident Fund & Misc. Provisions Act and the provisions of one Act cannot be read into the other when the Legislative intent is clear since the Provident Fund Act was enacted subsequent to the enactment of the Minimum Wages Act and if the Legislature so intended , it would have certainly read the definition of wage as provided under the Minimum Wages Act into the provisions of the Employees Provident Fund Act but instead it chose to provide a separate definition as it was conscious of the needs of the Legislation.

7. I have heard learned Counsel for the parties and have perused the impugned order.

8. On due consideration it is to be noticed that Section 2(b) of the Employees Provident Fund and Miscellaneous Provisions Act which is extracted below, clearly provides that the basic wage 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 may be paid or payable in cash to him but would not include the cash value of any food concession, any Dearness Allowance, House Rent Allowance, over time allowance, bonus, commission or any other similar allowance payable to an employee in respect of his employment or work done in such an employment:

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

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/asstt-provident-fund-commissioner-…

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."As against this, definition of wage as given out in the Minimum Wages Act is as below:

"wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment (and includes house rent allowance) but does not include -

(i) the value of

(a) any house accommodation, supply of light, water, medical attendance or

(b) any other amenity or any service excluded by general or special order of the appropriate Government

(ii)any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance

(iii)any travelling allowance or the value of any travelling concession

(iv)any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment or

(v)any gratuity payable on discharge.

9. It is thus evident that under the provisions of the Employees Provident Fund Act, the definition of wage has an appended exclusion clause in which the various allowances which are quite broad in nature have been provided so as to enable the employee to determine its liability to make the contribution to the fund.

10. The Minimum Wages Act on the other hand provides for a definition of wage which is distinct from that of the basic wage and that definition of wage includes within its ambit House Rent Allowance but does not include certain other allowances which are being detailed therein.

11. The objects and reasons of both the statutes are manifestly distinct even though they converge on the beneficial aspect of the welfare of an employee. The laws of interpretation of statute also provides that nothing more is to be read into the language of a statute and the words are to be read and interpreted as they exist to acknowledge the legislative intent.

12. Having regard to the aforesaid, there is little hesitation to hold that the contention of the learned Counsel for the Petitioner is mis-placed and that the Respondents have rightly excluded certain allowances such as House Rent Allowance, washing allowance and conveyance allowance while determining their

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/asstt-provident-fund-commissioner-…

liability towards the fund.

13. The judgment of Rajasthan High Court titled as DCM Limited v. Regional Provident Fund Commissioner upon which extensive reliance was placed by learned Counsel for the Petitioner does not enhance his case in any manner as there the Court was dealing with allowance by the name of ''good work allowance'' which the employer sought to exclude and which action did not find favour with the Court as it went strictly by the exclusion clause which provided for the limited heads which can be excluded. Much was said about the judgment of the Karnatka High Court in case titled as Airfreight Ltd. v. State of Karnatka and Ors. (supra) but upon perusal of the said judgment and upon the information supplied by the learned Counsel for the Respondents, it transpired that the Karnatka High Court while determining the issue had remanded the matter back to the Regional Provident Fund Commissioner for decision afresh and in a SLP preferred by the Respondents against the said order of remand, the Hon''ble Supreme Court while upholding the order of remand observed that "observation made by the Division Bench in its order should not be taken as exclusive but as tentative only and authority would be at liberty to decide the matter in accordance with law without being influenced by it". The Court has further been apprised that thereupon the contention of the learned Counsel for the Petitioner of the like nature which has been raised herein were negated.

14. Be that as it may, the fact remains that the Court is of the opinion that the contention of the learned Counsel for the Petitioner that the allowances could not be excluded and that the basic wage was deliberately being deflated is not correct. The exclusion clause is fairly large and the exclusions made while determining the basic wage cannot be said to be unjustified unless they are totally at variance and in complete deviation of the concept of the allowances sought to be under the exclusion clause.

15. For the aforesaid reasons, I do not find any infirmity in the impugned order recorded by the Appellate Tribunal and the petition is held to be without any merit and the same is hereby dismissed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/asstt-provident-fund-commissioner-…