
(2025) 12 BOM CK 1679
In the Bombay High Court
Case No : Writ Petition No. 6118 Of 2017

Central Board of Trustee

APPELLANT

Vs

Saket College of Arts, Commerce, & Science

RESPONDENT

Date of Decision : 16-12-2025

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 6, 7(A)

Citation : (2025) 12 BOM CK 1679

Hon'ble Judges : Amit Borkar, J

Bench : Single Bench

Advocate : Sandeep Mishra, Madhura Mulay, Payoja Gandhi, A. P. Wachasundar, S. D. Vyas, P. V. Nelson Rajan, S. D. Chipade, S. R. Crasto

Final Decision : Allowed

Judgement

Amit Borkar, J

1. The petitioner invokes Articles 226 and 227 of the Constitution to challenge the legality of the order dated 19 October 2016 passed by the Presiding Officer, Provident Fund Appellate Tribunal, New Delhi in ATA No. 12149(9)2014. By that order, the Tribunal set aside the determination made on 30 October 2014 under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 which had directed the respondent to pay provident fund dues. The petitioner seeks restoration of the order passed by the Authority under Section 7A.

2. The relevant facts are as follows. The petitioner states that the respondent establishment is covered under the EPF and MP Act and allotted Code No. MH/201739. Complaints dated 13 February 2013 and 20 March 2014 were received. An Enforcement Officer submitted a report dated 4 July 2014. On verification of records, it was found that the respondent did not comply with the mandatory provisions of the Act for the period from May 2009 to May 2014. An inquiry under Section 7A was commenced. During the inquiry, the salary

registers were examined. It appeared that the respondent split wages in a manner that reduced the base on which provident fund contribution was to be calculated. The Authority found that this was done to avoid statutory liability. After considering the record, an order dated 30 October 2014 was passed determining arrears of Rs. 2,91,765 under Section 7A.

3. The respondent challenged the order dated 30 October 2014 before the Provident Fund Appellate Tribunal at New Delhi. The Tribunal, by order dated 19 October 2016, allowed the appeal. It set aside the dues determined under Section 7A. Aggrieved by this reversal, the petitioner has approached this Court under Articles

226 and 227.

4. The learned Advocate for the petitioner submitted that the Tribunal failed to consider the nature and purpose of the EPF and MP Act. The Act is a social welfare legislation meant to secure the financial interest of employees. The record placed before the Authority showed that the respondent intentionally split wages to reduce the base for provident fund deduction. This conduct deprived the employees of their rightful statutory benefit. It was urged that such conduct amounted to a clear attempt to evade the Act and was contrary to Section 2(b) of the Act. Counsel submitted that basic wages include all emoluments earned by an employee while on duty, on leave, or on holidays, as per the contract of employment. Basic wages exclude only specific allowances such as the cash value of food concession, dearness allowance, house rent allowance, overtime allowance, bonus, commission, or similar allowances. Under Section 6, the employer must contribute 10 percent of the basic wages. The respondent could not unilaterally structure salary in a way that defeats the statutory mandate.

5. The petitioner relied upon the judgment of the Supreme Court in *Regional Provident Fund Commissioner (II) West Bengal v. Vivekanand Vidyamandir and others*, 2020 (17) SCC 641. Attention was invited to paragraphs 16 to 21. The submission is that the Tribunal ignored the binding principles laid down by the Supreme Court on the scope of basic wages and permissibility of wage splitting. Counsel submitted that the Tribunal's reasoning does not withstand scrutiny in the light of the settled position of law.

6. The learned Advocate for the respondent supported the order of the Tribunal. He submitted that the Tribunal has correctly held that none of the employees were drawing basic wages exceeding Rs. 6,500 per month. Therefore, no contribution was recoverable under Section 6 of the Act. Counsel submitted that it is settled law that not all payments made to employees fall within the definition of basic wages under Section 2(b). Only those payments which satisfy the statutory test can be treated as basic wages. He contended that wages paid to employees drawing more than Rs. 6,500 towards basic wages are outside the statutory ceiling and cannot attract contribution. He argued that the Authorised Officer cannot impose terms of employment or alter the manner in which the

employer structures salary. Counsel further submitted that no contribution can be demanded when the employees have already left service and when no deduction was made from their wages. According to him, it is not possible to recover employees' share from them now. He submitted that the employer is required to contribute only on the basis of basic wages plus dearness allowance as mutually agreed between employer and employee. Therefore, the demand based on minimum wages is contrary to law because the respondent had not deducted contribution from the employees on that basis. He placed reliance on *Jay Engineering Works Ltd. v. Union of India*, AIR 1963 SC 1480, *Rajasthan Prem Krishan Goods Transport Co. v. Regional Provident Fund Commissioner*, (1996) 9 SCC 454, *Shree Changdeo Sugar Mills v. Union of India*, (2001) 2 SCC 519, *Manipal Academy of Higher Education v. Provident Fund Commissioner*, (2008) 5 SCC 428, *The Management of Reynolds Pens India Pvt. Ltd. v. Regional Provident Fund Commissioner II*, 2011 (5) CTC 172, and *Surya Roshni Ltd. v. Employees Provident Fund Organisation*, 2011 Lawsuit (MP) 191.

7. I have heard the learned counsel appearing for both sides. I have carefully perused the entire record, including the order dated 30 October 2014 passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the order dated 19 October 2016 passed by the Appellate Tribunal, and the rival submissions advanced before this Court. The controversy has to be decided on the basis of this material alone.

8. The real issue before the Court is narrow. The question is whether the Authority was justified in determining provident fund arrears by holding that the respondent had structured wages in a manner that reduced the contribution base. The competing view taken by the Tribunal is that since the basic wages of employees did not exceed the statutory ceiling, no contribution could be demanded. Resolution of this issue depends on two connected aspects. One is the correct understanding of what constitutes basic wages under Section 2(b) of the Act. The other is whether, on facts, the Authority correctly applied that legal standard to the material on record.

9. The Act is a welfare legislation. It is enacted to protect employees against uncertainty in old age and to ensure financial security in times of need. Provident fund is not a charity. It is deferred wages earned by the employee during service. Any interpretation of the Act must therefore promote this protective purpose. At the same time, courts must remain vigilant against practices that defeat the object of the law while appearing to comply with it in form.

10. Section 2(b) defines basic wages. The definition is inclusive in nature and permits exclusion only of specific categories expressly mentioned in the statute. As a general rule, all payments which are part of normal remuneration for services rendered, and which are earned regularly while on duty, leave, or holidays, constitute basic wages. Only those payments which are genuinely variable, contingent, or excluded by statute can be kept out. An employer cannot avoid liability merely by giving recurring payments a different label.

11. Section 6 mandates contribution on basic wages. Section 7A empowers the Authority to inquire into and determine dues where there is failure to comply. These provisions together give the Authority the power to examine the substance of wage structures. The Authority is not confined to the names assigned to salary components. It is entitled to see whether the structure reflects real wages or an artificial arrangement designed to minimise statutory liability.

12. I have carefully examined the order passed under Section 7A. This order is not a bare statement of figures. It reveals the exact material on which the Authority has based its conclusion that the employer adopted artificial splitting of wages. The manner in which this conclusion is reached deserves close attention.

(i) The Authority has relied on statutory and contemporaneous records. The order records that Form No. 11, provident fund challans, professional tax challans, and Income Tax returns in Form 16 were produced by the employer. These are statutory records prepared and submitted by the employer in the ordinary course of business. This shows that the Authority did not act on guesswork. It proceeded on the employer's own documents.

(ii) The Authority records a clear and reasoned finding of avoidance. The order states that for avoiding provident fund liability, the establishment has shown lesser Basic plus Dearness Allowance in the pay structure. This observation is the outcome of examining the wage structure in the light of the statutory ceiling. The Authority has inferred intent from conduct reflected in records over a period of time.

(iii) The exercise undertaken is a comparison between real wages and declared Basic plus D.A. The tables clearly show the difference between the actual wages paid and the wages declared for provident fund contribution by restricting Basic plus D.A. up to Rs. 6,500. This explains the method adopted. The Authority treated the statutory ceiling as a reference point and calculated the shortfall created by the employer's structuring. This comparison lies at the heart of identifying artificial splitting.

(iv) The order contains two separate annexures. Annexure A concerns employees presently in service. Annexure B concerns employees who have left. This distinction shows that the Authority examined employee wise data and did not adopt a blanket or mechanical approach.

(v) The tables cover multiple financial years from 2009-10 to 2014-15. The number of employees remains broadly the same. The difference of wages increases year after year. Such consistency over time points to a conscious and structured wage design.

(vi) Liability is computed account wise under the statutory scheme. The figures are broken down under different heads such as A/c I, A/c II, A/c X, A/c XXI, and A/c XXII. These heads correspond to specific statutory accounts under the provident fund framework. The Authority has not fixed a lump sum arbitrarily. It

has apportioned liability strictly in accordance with the scheme of the Act.

(vii) The computation is based on actual wages paid. The Authority has not imposed minimum wages or rewritten the terms of employment. It has taken the wages actually paid by the employer and calculated the difference arising only because Basic plus D.A. was artificially capped at Rs. 6,500. This directly answers the argument that the Authority exceeded its jurisdiction by fixing wages.

(viii) The same practice is found in respect of employees who left service. The second table shows that wage splitting was followed even during the tenure of employees who later exited service. This makes it clear that the liability arises from the wage structure itself. It does not disappear merely because the employee has left.

(ix) The final figure is a logical outcome of the data. The concluding portion aggregates the figures from Annexure A and Annexure B and arrives at Rs. 2,91,765. This amount is the end result of year wise, employee wise, and account wise calculation.

(x) The legal effect of this material is clear. This page contains all elements required to support a finding of artificial splitting. The Authority examined original records. It compared real wages with declared Basic plus D.A. It found a uniform and long standing pattern of capping wages at the threshold while paying higher total remuneration. This squarely meets the substance over form test recognised by law.

13. The Tribunal adopted a narrow approach. It proceeded on the sole footing that the basic wages shown in the records did not exceed Rs. 6,500 per month. On that single premise, it concluded that no provident fund contribution could be demanded and set aside the assessment. In doing so, the Tribunal treated the statutory ceiling as if it were a complete shield against liability. It did not examine how the wage structure was designed. It did not ask whether the basic component was kept low by design while higher amounts were paid under other heads. The inquiry was halted at the numerical limit without examining the manner in which that limit was reached.

14. This approach misses the real point in issue. The true question is whether the amount shown as basic wages genuinely represents the wages earned by the employee, or whether it is the outcome of a conscious splitting of salary to reduce statutory contribution. The Authority under Section 7A examined this question on the basis of records and found artificial splitting. The Tribunal, by failing to test this finding against the material on record, did not engage with the very foundation of the Section 7A determination.

15. All the judgments relied upon by the respondent rest on one common principle. The nature of payment, not its label, is decisive. Genuine allowances and incentives stand excluded. Artificial splitting of regular wages does not. In the present case, the Authority has recorded a factual finding, based on records,

that the excluded payments were regular, uniform, and formed part of normal remuneration. The Tribunal did not dislodge this finding. Accordingly, the precedents cited by the respondent do not render the Section 7A determination illegal. They operate in a different factual context. On the facts of the present case, they do not justify interference with the Authority's finding of artificial splitting.

16. For these reasons, the impugned order dated 19 October 2016 passed by the Provident Fund Appellate Tribunal cannot be sustained.

17. The writ petition is accordingly allowed.

18. The order dated 19 October 2016 is set aside. The order dated 30 October 2014 passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is restored.