
(2020) 03 MP CK 0111

In the Madhya Pradesh High Court

Case No : Writ Petition No. 14287 Of 2010

M/s Carewell Security Services Private Limited

APPELLANT

Vs

Employees Provident Fund Organization

RESPONDENT

Date of Decision : 18-03-2020

Acts Referred:

Employees Provident Fund, 1952 — Section 2B, 2(b)(ii), 6, 7A, 7C, 7Q, 14B
Indian Penal Code, 1860 — Section 193, 196, 228

Citation : (2020) 03 MP CK 0111

Hon'ble Judges : S.C. Sharma, J;Shailendra Shukla, J

Bench : Division Bench

Advocate : G. S. Patwardhan, Sanjay Sharma

Final Decision : Dismissed

Judgement

S.C. Sharma, J

1. Regard being had to the similitude in the controversy involved in the present cases, these writ petitions were analogously heard and by a common

order, they are being disposed of by this Court. Facts of the Writ Petition No.14287/2010 are narrated hereunder.

The petitioner before this Court has filed this present petition being aggrieved by the order dated 30.11.2010 passed by the Employee Provident Fund

Appellate Tribunal in ATA No.372 (8)/10.

2. The facts of the case reveal that the petitioner is company incorporated under the provisions of the Companies Act and is engaged in the business

of providing security guards to various establishment. A notice was issued by the Regional Provident Fund Commissioner, Indore under the provision

of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred as the Act of 1952) directing the employer to deduct

Provident Fund dues from the wages paid to the workman. In the notice, it was also observed that the wages shown by the employer are negligible

and are even lesser to the wages prescribed under Minimum Wages Act. The notice was issued to ensure proper payment of Provident Fund dues

payable to the workers. The petitioner did submit a reply to the aforesaid notice dated 29.01.2008 and stated that they are complying with the

provisions of the Act of 1952 and they are deducting Provident Fund on the wages paid to the workman and the wages fixed under the Minimum

Wages Act cannot be made the basis for deducting Provident Fund dues.

3. The Regional Provident Fund Commissioner, Indore by an order dated 02.06.2009 rejected the objection of the petitioner and has held that the

petitioner has to pay Provident Fund contributions on the minimum wages. The petitioner's contention is that without taking into account the objection

raised by the petitioner and the arguments canvassed on behalf of the petitioner, the order dated 2. 06.2009 has been passed. Thereafter, the petitioner

has preferred an appeal before the Employee Provident Fund Appellate Tribunal and the appeal was dismissed by an order dated 30.11.2010. The

petitioner is aggrieved by the order passed by the Employee Provident Fund Commissioner dated 02.06.2009 and the order passed by the Employee

Provident Fund Appellate Tribunal dated 30. 11.2010.

4. The petitioner's contention is that the impugned orders are bad in law as earlier in the past, the Employee Provident Fund Appellate Tribunal has

delivered a judgment in Case No.ATA/04 (17)/1999 dated 01.05.2000 and has taken a view that the allowances / perks given to the employees cannot

be included within the definition of wages. It has also been argued that in similar case i.e. V.M. Salgaocar & Bros Private Limited v/s APFC, Panaji

decided on 26.11.2007 in ATA No.96 (9)/2005, the Tribunal has taken a similar view that allowances / perks are not included within the meaning of

wages. It has been stated that the Tribunal is taking a different view in different cases and the action of the Tribunal by taking a contrary view is bad

in law. The Tribunal ought to have assigned special reason from deviating from the view already taken earlier.

5. It has also been argued by Shri Patwardhan that no contribution can be claimed on allowances. Section 2B of the EPF Act does not cover any

allowances payable to the employees. He has also argued that by no stretch of

imagination, Dearness Allowance can be included within the meaning of the basic wages, and therefore, the Tribunal has erred in law and facts in dismissing the appeal preferred by the petitioner.

6. It has also been argued that by no stretch of imagination deduction cannot be done by including allowances, and therefore, the Regional Provident

Fund Commissioner as well as the Employee Provident Fund Appellate Tribunal have erred in law and facts and have passed the impugned orders

contrary to the provisions as contained under the Act of 1952. It has been argued that word expressions is not defined under the Act, cannot be

imported without any rational or logic. The respondent cannot take into account the shelter of Minimum Wages Act while deciding the case under the

Act of 1952. A prayer has been made for quashment of the impugned orders.

7. On the other hand, a reply has been filed on behalf of the respondent / Employee Provident Commissioner and it has been stated that the Act of

1952 provides of compulsory deduction of Provident Fund on basic wages and also by including other amounts, if any, paid to the employees and the

contribution so deducted has to be deposited in the worker's account maintained by the Provident Fund Commissioner. The respondents have stated

that the term basic wages is defined under Section 2 (b) of the Act of 1952, and therefore, in light of the judgment delivered by the Rajasthan High

Court in the case of DCM Shriram Consolidated Limited v/s Regional Provident Fund Commissioner reported in 2004 (102) FLR 42, 4th order

impugned does not warrant any interference.

8. It has been stated that the petitioner / employer has failed to deduct the amount and has not deposited the same with Employee Provident Fund

Organization, and therefore, order was passed under Section 7-A of the Act of 1952 and employer has exposed itself for proceeding under Section 7-

Q and 14-B of the Act of 1952. It has also been stated that the Regional Provident Fund Commissioner, while deciding the matter, has taken into

account the preliminary objection raised by the petitioner and during the proceedings under Section 7-A of the Act of 1952, all the grounds raised by

the petitioner have been looked into and a detailed and exhaustive order has been passed. Thereafter, the appellate authority has also taken into

account all the ground raised by the petitioner and in those circumstances, question of setting aside the orders impugned does not arise.

9. It has also been argued that in order overcome statutory liability, the respondents are paying wages to the workmen bifurcating them under various heads, which is impermissible in law. In order reduce the Provident Fund liability, the petitioner has split the basic wages to various allowances

without the component of D.A. to the employees. The respondents have prayed for dismissal of the writ petition.

10. A rejoinder has been filed in the matter and it has been stated that the Regional Provident Fund Commissioner has not taken into account the

judgment delivered by the Tribunal earlier on the subject and by no stretch of imagination, the contributions are to be paid on minimum wages. It has

been stated that the definition of the basic wages has to be looked into while deducting the Provident Fund contribution. The petitioner has also

enclosed a judgment delivered in ATA No.871(8)/2009 in the case of M/s Parag Copigraph Private Limited v/s RPFC, Indore.

11. Heard learned counsel for the parties at length and perused the record.

12. The moot question involved in the present case relates to basic wages as defined under Section 2(b)(ii) r/w with section 6 of the Act of 1952 for

computation or deduction towards Provident Funds. In the present case, a notice was issued to the petitioner under the provisions of the Act of 1952

to which a reply was filed, and thereafter, an order was passed by the Assistant Provident Fund Commissioner on 06.04.2010 under Section 7-A of

the Act of 1952. As per the case of the department, the establishment has paid the Provident Fund contribution for the year 2005-06 on the wages

lesser than the minimum wages prescribed for the employees under the category of semiskilled and after issuing a proper notice, an order was passed

under Section 7-A of the Act of 1952 without prejudice to any action under Section 7-C, 7-Q and 14-A of the Act of 1952. Against which an appeal

was preferred and the appellate authority has passed an order on 30.11.2010 dismissing the appeal.

13. In order to appreciate the controversy involved in the present case the following statutory provisions of the Act of 1952 are being reproduced as

under:-

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 (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

6. Contributions and matters which may be provided for in Schemes.â"1[***] The contribution which shall be paid by the employer to the Fund shall be 2[3[ten per

cent]] of the basic wages, 4[dearness allowance and retaining allowance (if any)] for the time being payable to each of the employees 5[(whether employed by him directly or by or through a contractor)], and the employeesâ"?? contribution shall be equal to the contribution payable by the employer in respect of him and may, 6[if

any employee so desires, be an amount exceeding 3[ten per cent.] 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]: 6[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 7[â"??ten per cent.â"??], at both the places where they occur, the words

7[â"??twelve per cent.â"??] 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 the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee. 8[Explanation 1].â"??For the purposes of this

9[section], dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee. 10[Explanation

2. â"??For the purposes of this 11[section], â"??retaining allowanceâ"?? means an 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.

7A. Determination of moneys due from employers.

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional

Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,â?

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3[Pension] Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of

Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:â?

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and

228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order shall be made under sub-section (1), unless 5[the employer concerned] is given a reasonable opportunity of representing his case. 6[(3A) Where the

employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to

produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or

determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on

record. 7[(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order,

apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any

sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with

the inquiry: Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the

officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer. Explanation.â?"Where an appeal has been

preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the

appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of

Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:â?

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and

228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order 4[***] shall be made under sub-section (1), unless 5[the employer concerned] is given a reasonable opportunity of representing his case. 6(3A) Where

the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.] 7[(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such

order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any

sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with

the inquiry: Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the

officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer. Explanation.â?"Where an appeal has been

preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the

appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party. 7Q.

Interest payable by the employer.â?"The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be

specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.]

14(b) to any other establishment employing 3[twenty] or more persons or class of such establishments which the Central Government may, by notification in the

Official Gazette, specify in this behalf: Provided that the Central Government may, after giving not less than two monthsâ?? notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than 3[twenty] as may be specified

in the notification.] 4[(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central

Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any

establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the

provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.] 5[(5) An

establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls

below twenty.

14. The aforesaid statutory provisions of law make it very clear that the Act of 1952 provides for compulsory deduction on the basic wages excluding

dearness allowances and retaining allowance, if any, paid to the employee and the contribution, so deducted, is deposited in the account of the worker

by the establishment in the account be maintained by the Provident Fund Commissioner. The definition of basis wages is quite exhaustive and it is

certainly supported by various judicial pronouncement delivered from time to time.

15. The Act of 1952 also provides of providing insurance and pensionary benefit to the employees calculated on the basis of PF accumulation and the

last 12 months' wages on which PF is paid. The Act of 1952 empowers the authority to pass appropriate order by following due process of law, in

case, the establishment denies any employees, his legitimate dues which he has rightly earned in terms of the provisions of the Act. The Act also

provides that in case, the establishment fails to deposit the legitimate dues of the worker, the Employee Provident Fund Organization, under Section 7-

A of the Act of 1952, is empowered to initiate action against the establishment for the purposed of determination of dues against the employer, who is

under an obligation by virtue of the provision of the Act of 1952, to deposit the legitimate dues of the workers. The assessment of dues is done through a quasi-judicial process and proper opportunity is given to the establishment. The Act also provides that in case, the amount, which is required to deducted and deposited with the Provident Fund Commissioner is not deposited with Provident Fund Commissioner, the Act empowers the authority to levy penalty and damages under Sections 7-Q and 14-B of the Act of 1952 along with interest.

16. The facts of the case reflect that the establishment along with other establishments, in order to deprive the worker of their legitimate dues relating to Provident Fund, has bifurcated the payment of huge amount in form of other allowances more or equal of 100% of fixed of the basic fixed for the purpose of payment of Provident Fund and it was done only to reduce Provident Fund liability. As per the definition of basic wages, it does not include cash value for any food concession, any Dearness Allowance, House Rent Allowance, Overtime Allowance etc. etc. as well as any present made by the employer. Any other allowance paid by employer, in order to reduce the basic wages, has to be taken into account for calculating the Provident Fund Contribution and in the present case, a mischief was played by the employer by bifurcating the amount under various heads and the basic wages paid to the workers was less than the minimum wages as fixed under the Minimum Wages Act. In those circumstances, after affording proper opportunity of hearing to the establishment, the impugned order has been passed.

17. The controversy involved in the present case stands concluded on account of a judgment delivered by the Hon'ble Supreme Court in the case of

The Regional Provident Fund commissioner (II) West Bengal v/s Vivekananda Vidyamandir & Others in Civil Appeal No.6221/2011 decided on

28.02.2019. The Hon'ble Supreme Court, after taking into account the judgment delivered in respect of basic wages and Provident Fund contribution

depending upon the basis wages, in paragraphs 8 to 15 has held as under:-

8. We have considered the submissions on behalf of the parties. To consider the common question of law, it will be necessary to set out the relevant provisions of the Act for purposes of the present controversy.

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

(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 employees' 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."

9. Basic wage, under the Act, has been defined as all emoluments paid in cash to an employee in accordance with the terms of his contract of employment. But it

carves out certain exceptions which would not fall within the definition of basic wage and which includes dearness allowance apart from other allowances mentioned

therein. But this exclusion of dearness allowance finds inclusion in Section 6. The test adopted to determine if any payment was to be excluded from basic wage is

that the payment under the scheme must have a direct access and linkage to the payment of such special allowance as not being common to all. The crucial test is

one of universality. The employer, under the Act, has a statutory obligation to deduct the specified percentage of the contribution from the employee's salary

and make matching contribution. The entire amount is then required to be deposited in the fund within 15 days from the date of such collection. The aforesaid

provisions fell for detailed consideration by this Court in *Bridge & Roof* (supra) when it was observed as follows:

"7. The main question therefore that falls for decision is as to which of these two rival contentions is in consonance with s. 2(b). There is no doubt that 'basic wages' as defined therein means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract

of employment and which are paid or payable in cash.

If there were no exceptions to this definition, there would have been no difficulty in holding that production bonus whatever be its nature would be included within

these terms. The difficulty, however, arises because the definition also provides that certain things will not be included in the term 'basic wages', and these are

contained in three clauses. The first clause mentions the cash value of any food concession while the third clause mentions that presents made by the employer. The

fact that the exceptions contain even presents made by the employer shows that though the definition mentions all emoluments which are earned in accordance with

the terms of the contract of employment, care was taken to exclude presents which would ordinarily not be earned in accordance with the terms of the contract of

employment. Similarly, though the definition includes "all emoluments" which are paid or payable in cash, the exception excludes the cash value of any food

concession, which in any case was not payable in cash. The exceptions therefore do not seem to follow any logical pattern which would be in consonance with the main definition.

8. Then we come to clause (ii). It excludes dearness allowance, 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. This exception suggests that even though the main part of the definition includes all

emoluments which are earned in accordance with the terms of the contract of employment, certain payments which are in fact the price of labour and earned in accordance with the terms of the contract of employment are excluded from the main part of the definition of "basic wages". It is undeniable that the exceptions contained in clause (ii) refer to payments which are earned by an employee in accordance with the terms of his contract of employment. It was admitted by counsel on

both sides before us that it was difficult to find any one basis for the exceptions contained in the three clauses. It is clear however from clause (ii) that from the definition of the word "basic wages" certain earnings were excluded, though they must be earned by employees in accordance with the terms of the contract of

employment. Having excluded "dearness allowance" from the definition of "basic wages", s. 6 then provides for inclusion of dearness allowance for purposes of

contribution. But that is clearly the result of the specific provision in s. 6 which lays down that contribution shall be $\frac{61}{4}$ per centum of the basic wages, dearness

allowance and retaining allowance (if any). We must therefore try to discover some basis for the exclusion in clause (ii) as also the inclusion of dearness allowance

and retaining allowance (if any) in s. 6. It seems that the basis of inclusion in s. 6 and exclusion in clause (ii) is that whatever is payable in all concerns and is

earned

by all permanent employees is included for the purpose, of contribution under s. 6, but whatever is not payable by all concerns or may not be earned by all employees

of a concern is excluded for the purpose of contribution. Dearness allowance (for examples is payable in all concerns either as an addition to basic wages or as a part

of consolidated wages where a concern does not have separate dearness allowance and basic wages. Similarly, retaining allowance is payable to all permanent

employees in all seasonal factories like sugar factories and is therefore included in s. 6; but house rent allowance is not paid in many concerns and sometimes in the

same concern it is paid to some employees but not to others, for the theory is that house rent is included in the payment of basic wages plus dearness allowance or

consolidated wages. Therefore, house rent allowance which may not be payable to all employees of a concern and which is certainly not paid by all concern is taken

out of the definition of ""basic wages"", even though the basis of payment of house rent allowance where it is paid is the contract of employment. Similarly, overtime

allowance though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of

employment; but because it may not be earned by all employees of a concern it is excluded from ""basic wages"". Similarly, commission or any other similar allowance

is excluded from the definition of ""basic wages"" for commission and other allowances are not necessarily to be found in all concerns; nor are they necessarily earned

by all employees of the same concern, though where they exist they are earned in accordance with the terms of the contract of employment. It seems therefore that

the basis for the exclusion in clause (ii) of the exceptions in s. 2(b) is that all that is not earned in all concerns or by all employees of concern is excluded from basic wages. To this the exclusion of dearness allowance in clause

(ii) is an exception. But that exception has been corrected by including dearness allowance in s. 6 for the purpose of contribution. Dearness allowance which is an exception in the definition of "basic wages", is included for the purpose of contribution by s. 6 and the real exceptions therefore in clause (ii) are the other exceptions

beside dearness allowance, which has been included through S.

6.??

10. Any variable earning which may vary from individual to individual according to their efficiency and diligence will stand excluded from the term "basic wages"

was considered in *Muir Mills Co. Ltd., Kanpur Vs. Its Workmen*, AIR 1960 SC 985 observing:

11. Thus understood "basic wage" never includes the additional emoluments which some workmen may earn, on the basis of a system of bonuses related to the

production. The quantum of earning in such bonuses varies from individual to individual according to their efficiency and diligence; it will vary sometimes from

season to season with the variations of working conditions in the factory or other place where the work is done; it will vary also with variations in the rate of supplies

of raw material or in the assistance obtainable from machinery. This very element of variation, excludes this part of workmen's emoluments from the connotation of

basic wages"

11. In *Manipal Academy of Higher Education vs. Provident Fund Commissioner*, (2008) 5 SCC 428, relying upon *Bridge Roof's* case it was observed:

10. The basic principles as laid down in *Bridge Roof's* case (supra) on a combined reading of Sections 2(b) and 6 are as follows:

(a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.

(b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. By way of example it was held that overtime

allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of

employment but because it may not be earned by all employees of a concern, it

is excluded from basic wages.

(c) Conversely, any payment by way of a special incentive or work is not basic wages.â? 12. The term basic wage has not been defined under the Act. Adverting to

the dictionary meaning of the same in Kichha Sugar Company Limited through General Manager vs. Tarai Chini Mill Majdoor Union, Uttarakhand, (2014) 4 SCC 37, it

was observed as follows:

â??9. According to <http://www.merriam-webster.com> (Merriam Webster Dictionary) the word 'basic wage' means as follows:

1. A wage or salary based on the cost of living and used as a standard for calculating rates of pay

2. A rate of pay for a standard work period exclusive of such additional payments as bonuses and overtime.

10. 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. In our opinion,

those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage. Where the payment is available to those who

avail the opportunity more than others, the amount paid for that cannot be included in the basic wage. As for example, the overtime allowance, though it is generally

enforced across the board but not earned by all employees equally. Overtime wages or for that matter, leave encashment may be available to each workman but it may

vary from one workman to other. The extra bonus depends upon the extra hour of work done by the workman whereas leave encashment shall depend upon the

number of days of leave available to workman. Both are variable. In view of what we have observed above, we are of the opinion that the amount received as leave

encashment and overtime wages is not fit to be included for calculating 15% of the Hill Development Allowance.â??

13. That the Act was a piece of beneficial social welfare legislation and must be interpreted as such was considered in The Daily Partap vs. The Regional Provident

Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh, (1998) 8 SCC 90.

14. Applying the aforesaid tests to the facts of the present appeals, no material has 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. In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he

was otherwise required to put in. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period.

It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output

prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under

the Act, who have arrived at a factual 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 accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent

conclusions of facts. The appeals by the establishments therefore merit no interference. Conversely, for the same reason the appeal preferred by the Regional

Provident Fund Commissioner deserves to be allowed.

15. Resultantly, Civil Appeal No. 6221 of 2011 is allowed. Civil Appeal Nos. 396566 of 2013, Civil Appeal Nos. 396768 of 2013, Civil Appeal Nos. 396970 of 2013 and

Transfer Case (C) No.19 of 2019 are dismissed.â??

In the aforesaid case, the Hon'ble Supreme Court has held that the establishment before the Hon'ble Supreme Court did not place any material to

demonstrate that the allowances in question are being to paid to its employee were either variable or 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 specially to those who avail the opportunity.

It has further been held that in order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. It has been further held that no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. The Apex Court in the aforesaid case has held that the allowances in question were essentially a part of basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the Provident Fund Account of the employees.

18. In the present case, the establishment has failed miserably before the Provident Fund Commissioner and before the Tribunal and even before this Court that the allowances in question were being paid to its employees were either variable or were linked to any incentive of production resulting in greater output by an employee and the allowances in question were not paid across the board to all employees in a particular category or were being paid specially to those who avail the opportunity.

19. Resultantly, as in the present case also the employer has camouflaged basic wage as part of allowance so as to avoid deduction and contribution, the Provident Fund Commissioner as well as the Tribunal were justified in the passing the impugned orders.

20. The Act of the 1952 is a beneficial social welfare legislation as held by the Hon'ble Supreme Court and has to be treated as such keeping in view the view expressed by the Hon'ble Supreme Court in the case of *The Daily Partap v/s The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh & Union Territory, Chandigarh* reported in (1998) 8 SCC 90.

21. Resultantly, this Court does not find any reason to interfere with the order passed by the Regional Provident Fund Commissioner and the order passed by the Employee Provident Fund Appellate Tribunal.

The Writ Petition is accordingly, dismissed, however, the Provident Fund Commissioner shall be free to proceed ahead against the establishment for levy of damages and for levy of interest in accordance with law.

The order passed by this Court in the present case shall govern the connected writ petitions also, and therefore, the connected writ petitions also stand dismissed.

In the writ petitions filed by the Central Board of Trustees Employees Provident Fund Organization, the order passed by the Presiding Officer,

Employee Provident Fund Appellate Tribunal are under challenge, and therefore, in light of the judgment delivered by this Court the writ petitions

preferred by the Central Board of Trustees Employees Provident Fund Organization are allowed. The impugned order passed by the Presiding

Officer, Employee Provident Fund Appellate Tribunal is quashed only to the extent petitions filed by the Central Board of Trustees Employees

Provident Fund Organization are concerned.

Let a copy of the order passed by this Court in the present case be kept in the connected petitions also.

Certified copy, as per rules.