

ATA No. 743 (8) 10

Dated 30/11/15

From

Registrar
EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL
(Ministry of Labour and Employment, Government of India)
4th Floor, Core 2, SCOPE Minar, Laxmi Nagar, Delhi 110092

To, *Delight Services*

Vs

R.P.F.C. Indore

Sub: Forwarding of Final Order.

Sir,

I am directed to forward herewith for information and immediate compliance/necessary action a copy of order dated 26/11/15 passed by the Hon'ble Presiding Officer EPF Appellate Tribunal, New Delhi.

Please acknowledge receipt.

Yours faithfully

[Signature]
Presiding Officer/Registrar

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**EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL
NEW DELHI
ATA No. 743(8)2010**

Delight ServicesAppellant

Vs

RPFC, IndoreRespondent

ORDER

Dated: 26.11.2015

**Present: Sh S.K.Gupta, Advocate for the Appellant
Sh. Shivnath Mehanta, Advocate for the Respondent**

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1. By the present appeal filed by appellant under section 7-I of the Employees' Provident Fund & Miscellaneous Provision Act, 1952 (here-in-after referred to as "the Act"), appellant seeks quashing of order dated **24.09.2010** passed on 29.09.2010 by respondent, under Section 7A of the Act.

2. The brief facts as emerging from the appeal are that the appellant is a contractor engaged in the work of supplying labours to various industries. The provisions of EPF & MP Act, are applicable on the appellant establishment and is registered at **Code No. MP/17836** and it has been assiduously depositing the contribution of its employees. Respondent served the appellant with a notice **observing that the salary/wages shown is negligible even lesser in comparison to the minimum basic wages as notified under the**

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Minimum Wages and further observed that PF contribution on the wages less than minimum wages is not justifiable and defeats the very purpose of the social welfare legislation aimed for providing old ages social security in the name of PF and Pension to the poor workers. Contribution has been assessed in tune of Rs. 1,37,599/- on the basis of minimum wages of semi skilled employee. Appellant provides labours to hospital and nursing homes, call centres which were not subjected to Minimum Wages Act at all. The provisions of the Minimum Wages Act have not been made applicable to these class of establishments, hence this appeal.

3. Shri S. K. Gupta, Counsel for appellant contended that the impugned order was passed without application of mind in a highly laconic manner as a matter of routine.

4. Counsel for appellant further contended that appellant establishment is depositing PF contribution according to law and respondent with malafide intention inflicted a notice to the appellant establishment, directing the appellant establishment to change policy regarding payment of salary to employees according to minimum basic wages. Whereas respondent was not supposed to direct the appellant establishment to change the policy of salary of employees of appellant establishment.

5. Counsel for appellant further contended that as per law appellant establishment is liable to deduct PF contribution on the basis of basic wages as defined under Section 2(b) of the Act, read with Section 6 of the Act but respondent without considering written objections and written representations, passed impugned order against the principles of natural justice. Respondent was having no power under the Act to direct any employer that how and in what manner employee is to be paid. **In support of his argument counsel for appellant cited a case law titled Assistant PF**

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6. Per contra learned counsel for the respondent contended that the EPF Act is meant to provide social and financial security to the downtrodden section of the society at the time of their retirement, death during service, medical treatment, etc. The EPF Act is a social welfare legislation which cannot be done away with and strict adherence to its provisions is mandatory. Under this Act, the employer is duty bound to pay the minimum wages to every employee and thereafter employer is also duty bound to pay the Provident Fund contributions on time.

7. Counsel for appellant further contended that a notice was served upon to appellant establishment for making contribution under section 7A of the Act and as appellant establishment was found paying the PF contribution on the wages lesser than the minimum wages prescribed for employees under the category of semi-skilled and appellant evaded amount of Rs. 5,37,072/- so respondent was having no option but to assess amount of Rs.1,37,599/- under Section 7A of the Act. There is no illegality in the order of respondent, hence appeal filed may appellant may be dismissed.

8. I have given my thoughtful consideration to the submissions made by learned counsels for the parties and have also perused the material on record.

9. The primary contention on behalf of the appellant is that respondent is not empowered to direct the appellant establishment to pay minimum wages to its employees and further to pay PF contribution on the basis of minimum wages.

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10. Admittedly, there is no dispute regarding applicability of the provisions of the Act to appellant establishment and that PF Code No. MP/17836 allotted to the appellant establishment.

11. As per Section 6 of the Act, employer is supposed to contribute/pay in the Fund on the basis of the basic wages, dearness allowance and retaining allowance for the time being payable to each of the employees.

12. As per case of appellant, appellant is depositing PF contribution as per law, i.e. on the basis of basic wages, dearness allowance and retaining allowances.

13. In case in hand, controversy is with regard to basic wages. 'Basic Wages' has also been defined in Section 2(b) of the Act which is reproduced here :-

Section 2(b) "basic wages" means all emoluments which are earned by an employee while on duty [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 risen 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 present made by the employer;

14. Section 2(b) of the Act does not prescribed how much amount shall be considered as basic wages. So now this is to be seen by this Tribunal whether respondent is empowered to direct the appellant establishment to pay minimum wages to

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the employees. During course of argument, no provision of the Act cited by counsel for respondent which could reveals that 'Commissioner' is empowered to direct the employer to pay minimum wages to the employee.

15. Bifurcation of wages below minimum wages or basic wages and DA etc. are the issues, completely out of the purview of PF authorities. PF authorities has no jurisdiction to ensure the compliance of Minimum Wages Act or to issue any direction in this regard. Wages are to be determined is a decision between employee and employer and further authority appointed under the Minimum Wages Act is only empowered to raise issue regarding Minimum Wages, to be given to the employee.

16. Being quasi judicial authority respondent has statutory power to direct the appellant establishment to deduct PF contribution on the basis of Section 6 of the Act only.

17. Keeping in view all the circumstances, this Tribunal reached at a considered opinion that order dated 24.09.2010 passed by respondent under Section 7A of the Act is illegal, hence set aside. Copy of the order be sent to parties. File be consigned to record room after due compliance.

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R/S(OA)

- ① Appeal heard & disposed off
- ② Issue copy of order to both the parties
- ③ Enter in disposal case register
- ④ File consign to record room.

(HARISH GUPTA)
Presiding Officer, EPFAT

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