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कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)
EMPLOYEES' PROVIDENT FUND ORGANISATION
(Ministry of Labour & Employment, Govt. of India)
मुख्य कार्यालय / Head Office
भविष्य निधि भवन, 14-भीकाजी कामा प्लेस, नई दिल्ली-110 066.
Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi - 110 066.

No. LC-4/5/13/Judgement 10857 **Date: 12.09.2013**

16 SEP 2013

To

All Addl. Central P.F. Commissioner, Zones
All Regional P.F. Commissioners
Regional Offices /Sub Regional Offices.

Sub:- Order dated 22.07.2013 of Hon'ble High Court, Delhi in the matter of M/s Whirlpool of India Ltd Vs RPFC ; definition of Basic Wages under the Act -reg.

Sir,

Please find enclosed a copy of order dated 22.07.2013 of Hon'ble High Court of Delhi in the matter of M/s Whirlpool of India Ltd Versus Regional Provident Fund Commissioner in W.P. (C) 7729/1999 which deals in detail about the definition and issues related to basic wages as provided under the Act.

2. The above order is being circulated for information and necessary action of all concerned. It may be utilised in adjudicating similar issues as well as while defending cases before EPFAT and High Courts in filing counter affidavits and oral pleadings.

Yours faithfully,

Encl: As above

Sunila 12.09.13

(Anita S. Dixit)
Regional P.F. Commissioner-I (Legal)

Copy to:-

1. RPFC Compliance / Director Recovery Head Office for information & necessary action.
2. Regional P.F. Commissioner, NDC/Web Administrator for web upload.

S.N. 4(R)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 15.05.2013

Judgment delivered on: 22.07.2013

Important Order. May be circulated for information & use of all the field offices.
Rinika 30.08.13

W.P.(C) 7729/1999

M/S WHIRLPOOL OF INDIA LTD ..... Petitioner

Through: Mr. Neeraj Kishan Kaul, Sr. Advocate with Mr. A.S.Chadha, Advocate & Ms. Meera Mathur, Advocate

RC II, Legal
865
30/8/13
30.8.2013
500(L)

versus

REGIONAL PROVIDENT FUND COMMISSIONER..... Respondent

Through: Mr. R.C.Chawla, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

Mamta
30/8/13

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versus

REGIONAL PROVIDENT FUND COMMISSIONER..... Respondent

Through: Mr. R.C.Chawla, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

JUDGMENT

VIPIN SANGHI, J.

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 28.07.1999 passed by the Regional Provident Fund Commissioner (RPFC) under section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (the Act), and the appellate order dated 17.12.1999 passed by the Employees Provident Fund Appellate Tribunal (the Tribunal) dismissing the petitioners appeal under section 7I of the Act against the order dated 28.07.1999.

2. The petitioner runs its factory at Faridabad. In respect of its employees, it deducts and deposits the provident fund dues under the provisions of the Act. It appears that the petitioner provided subsidized canteen facilities to the workmen/employees working at its factory. Subsequently, a settlement was reached under section 12(3) of the Industrial Disputes Act, 1947 (the ID Act) between the petitioner management and the workers union, namely, Kelvinator of India Employees Union (Regd.) on 13.10.1995. One of the terms of the said settlement relating to reorganization of canteen services and canteen allowance, which is relevant for the present purpose, reads as follows:

> *"15. REORGANISATION OF CANTEEN SERVICES:*
>
> *a) Both the parties agree to re-organize the Canteen Services to introduce canteen allowance to the workmen in place of subsidized items. No subsidy will be paid hereafter to canteen contractor who will sell lunch, tea and snacks at the market rate.*
>
> *b) CANTEEN ALLOWANCE:*
>
> *The workmen will be paid Rs.300/- (Rupees three hundred only) per month as Canteen Allowance with effect from 1st January, 1996 in lieu of prevailing subsidized canteen facilities and will be proportional to the physical presence during the month. Even the half day availed by the workmen will be taken into account while calculating the canteen allowance.*
>
> *c) Only vegetarian food will be made available in the canteen and the new rates in the canteen will be as under:-*

EXISTING RATES			*NEW RATES*	
1. Item	*Rate*	*No.*	*Cost*	
2. Tea	*0.15*	*02*	*0.30*	
3. Snacks	*0.15*	*02*	*0.30*	
4. Lunch/ Dinner	*1.20*	*01*	*1.20*	*As per market rate*
Total			*1.80"*	

3. There is no dispute on facts that though the canteen allowance of Rs.300/- was agreed to be paid with effect from 01.01.1996 in lieu of prevailing subsidized canteen facilities, the same was paid by the petitioner to the eligible employees/workmen with effect from 01.11.1996 onwards.

4. The area enforcement officer, upon inspection of the records of the petitioner, raised the issue with regard to non payment of provident fund dues in respect of the canteen allowance of Rs.300/- per month. The stand of the respondent authorities was that the said amount of Rs.300/- represented the cash value of food concession allowed to the employees - since the said allowance was in lieu of pre-existing subsidized canteen facilities and, consequently, by virtue of explanation (1) to section 6 of the Act, the said allowance was liable to be included as a part of the dearness allowance for purpose of computation of the employers share of contribution towards provident fund. This was disputed by the petitioner, which is what has given rise to the present petition. Before proceeding further, I may, at this stage set out the relevant statutory provisions contained in the Act for proper appreciation of the issue that arises for consideration by this Court.

5. Section 2(b) defines the expression "basic wages" to mean *"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;"

6. Section 6 sets out the contributions which the employer is obliged to make to the provident fund. The same reads as follows:

> *"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."

7. The stand taken by the petitioner before the authorities was that canteen allowance could not be treated as *"cash value of food concession"*. According to the petitioner, the canteen allowance did not form part of the basic wages since it constituted *"any other similar allowance payable to the employee in respect of his employment or of work done in such employment"* within the meaning of that expression used in section 2(b)(ii) of the Act. The petitioner contended that it did not provide subsidized canteen facilities upon reorganization of canteen services under the settlement. The expression *"cash value of any food concession"* used in section 2(b)(i), as also in explanation (1) to section 6, means the cash

equivalent of any food concession allowed to the employee. According to the petitioner, the provision of food concession or subsidy is a must for computation of the cash value of such food concession. Since no food concession was granted as a matter of fact, after the reorganization of canteen services, there was no question of computing the cash value of any food concession.

8. The petitioner also claimed that in the agreement arrived at with the employees union, it had nowhere been agreed that canteen allowance shall be treated as basic wages or dearness allowance, or that they will be provided any food in lieu of any part of wages. The petitioner also demanded that the respondent may, if it is so advised, initiate proceedings under section 7A of the Act to resolve the controversy. Accordingly, the respondent authorities initiated an enquiry under section 7A of the Act. The same culminated in the impugned order dated 28.07.1999. The RPFC rejected the petitioner's aforesaid submissions and concluded that the canteen allowance of Rs.300/- per month constituted cash value of food concession. Consequently, the RPFC computed the liability of the petitioner for the period October 1995 to March 1998 at Rs.63,83,794/-. Aggrieved by the said impugned order, the petitioner preferred an appeal bearing no.ATA-16(8) of 1999 before the Tribunal, which dismissed the same by the impugned order dated 17.12.1999.

9. Therefore, the issue that arises for consideration is whether the canteen allowance, which is paid in cash by the petitioner to all the employees in terms of the settlement aforesaid, is liable to be included for

purpose of computation of the provident fund dues of the employees under section 6 of the Act.

10. The submission of the petitioner is that section 2(b) uses two expressions i.e. "cash value" and "cash payments". These are two different expressions. It is only the "cash value" of food concession which is liable to be included by virtue of explanation (1) to section 6 for purpose of computation of the provident fund dues, and not the "cash payment" as is made to the workers. The submission is that the expression "basic wages" does not include, *inter alia*, the cash value of any food concession and several other allowances such as dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment, or for the work done in such employment. Section 6 provides that the contribution payable by the employer to the fund shall be computed on the basic wages, dearness allowance and retaining allowance (if any). It is by virtue of Explanation I to Section 6 that a legal fiction is created, according to which, dearness allowance is *"deemed to include also the cash value of any food concession allowed to the employee"*. Therefore, even though, dearness allowance and cash value of any food concession do not form part of the basic wages as defined in section 2(b) of the Act, for purpose of computation of the employers contribution to the fund - apart from the basic wages, dearness allowance (which includes the cash value of any food concession allowed to the employee) and retaining allowance, if any, are liable to be included.

11. The submission of the petitioner is that if the intention of the Parliament was to include "cash payment", then Explanation I would have

so stated explicitly. Instead, the words used in Explanation I are *"cash value of any food concession allowed to the employee"*. In support of this submission, the petitioner places strong reliance on the decisions of the Bombay High Court and the Gujarat High Court in ***The Tata Hydro Electric Power Supply Co. v. Regional Provident Fund Commissioner, Maharashtra, Goa & Ors.***, 2008 LLR 1013, and ***Reliance Industries Limited v. Regional Provident Fund Commissioner, Vadodara & Anr.***, 2011 (1) GLR 828 respectively.

12. Learned counsel for the petitioner has also sought to place reliance on two departmental circulars issued by the respondent authorities under different directorates, wherein the view taken is that "tiffin allowance" is not liable to be included for purpose of computation of the employers provident fund contribution.

13. On the other hand, learned counsel for the respondent has supported the impugned orders by placing reliance on the reasoning recorded therein. Learned counsel has also placed strong reliance on the judgment of the Gujarat High Court in ***Gujarat Gypromet Ltd. v. Asst. Provident Fund Commissioner***, 2004 (3) CLR 485 (Special Civil Application No.5666/2004 decided on 26.07.2004) in support of his submission that canteen allowance, in fact, forms part of the basic wages and, therefore, is liable to be included for purpose of computation of the employers contribution of provident fund.

14. In his rejoinder, learned senior counsel for the petitioner has pointed out that the decision in ***Gujarat Gypromet*** (supra) has been considered in the subsequent decision of ***Reliance Industries Ltd.*** (supra), and distinguished.

Reliance is also placed on ***Manganese Ore (India) Ltd. v. Chandi Lal Saha & Ors.***, AIR 1991 SC 520, to submit that the monetary value of grain supplied at concessional rate to the employees was held as not liable to be included in the wages for purpose of the Minimum Wages Act.

15. The expression "basic wages" has been defined to mean "***all emoluments which are earned by an employee*** *while on duty or on leave or on holidays* ***in accordance with the terms of the contract or employment and which are paid or payable in cash to him***" (emphasis supplied). After so defining "basic wages", by clauses (i) to (iii), certain exclusions have been made from the said definition.

16. Clause (ii) of section 2(b) specifically enumerates the following kinds of allowances, which do not form part of the basic wages. These are:

i) Any dearness allowance i.e. cash payments by whatever name called, paid to the employee on account of rise in the cost of living. (Therefore, the same is related to the cost of living and would be variable);

ii) House rent allowance;

iii) Overtime allowance;

iv) Bonus;

v) Commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment.

17. The aforesaid enumeration would show that each of the above are different kinds of allowances which are founded on independent considerations. They are independent, as each of them stands on unrelated and independent footing. Whereas, dearness allowance is linked to the rise in cost of living and, therefore, would be variable, the house rent allowance would be provided to address the housing need of the employee. The overtime allowance would be admissible only to those of the employees who work overtime, and not to others who either do not get the opportunity to work overtime, or chose not to work overtime. The bonus would generally be linked to the turnover and profitability of the employers business and would derive its basis either from the Payment of Bonus Act, 1965, or customary usage or conditions of service.

18. The last of the aforesaid allowances is *"commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment"*. The issue that arises is, whether the expression *"any other similar allowance ...."* is to be read independently of the expression "commission", or whether the same takes its colour from the expression "commission". In other words, whether the words *"any other similar allowance"* has to be read in conjunction with *"dearness allowance .... house-rent allowance, overtime allowance, bonus"*, or only in conjunction with "commission" – is the question to be answered. On the answer to this question would depend the scope and width of the expression "*any other similar allowance*". The same would, in turn have a bearing on the scope and width of the expression "*basic wages*" because, if the exclusionary clause contained in clause (ii) above is

construed widely in its scope, it would have the effect of narrowing the scope and width of the expression "basic wages", and vice versa.

19. In my view, the expression *"any other similar allowance ... ..."* takes its colour from the expression "commission". This is so because the said expression uses the words "*similar allowance*". There is no similarity in the nature of the allowances mentioned in clause (ii) as detailed herein above, since they are founded on wholly unrelated considerations. As aforesaid, dearness allowance is linked to the rise in cost of living; house rent allowance is provided to meet the housing concern of the employees; over time allowance is payable for the overtime put in by the employees; bonus would generally be linked to productivity and profitability, and; commission would be linked to the turnover generated by the employee on account of his own output. The Parliament could not have used the word "*similar*" to club these allowances when, in fact, there is no similarity in them. The draftsman has consciously used 'commas' after "dearness allowance", "house-rent allowance", "overtime allowance", and "bonus". However, there is no break or "*comma*" between "commission" and "*or any other similar allowance .....*". This shows that the expression *"any other similar allowance..."* has to be read in conjunction with "commission" alone. The expression *"any other similar allowance ..."* would, therefore, mean an allowance which is similar to "commission". To construe the words *"any other similar allowance ...."* generally and widely – to include any or all payment that the employer may call an "allowance", would have the effect of narrowing the scope of the expression "basic wages". If allowance is construed widely, the employer would dismember the basic wages into

several allowances, including those specifically contained in the exclusionary clauses (i) (ii) and (iii) of section 2(b), so as to reduce its own liability towards provident fund contribution.

20. It is a well settled rule of interpretation that a proviso or an exclusionary clause cannot be given so wide an interpretation as to consume the main provision itself. The proviso/exclusionary clause is liable to be interpreted narrowly so as to give full meaning and effect to the main provision. In ***The Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore v. The Indo Mercantile Bank Limited,*** AIR 1959 SC 713, the Supreme Court observed *"The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also Corporation of The City of Toronto v. Attorney-General for Canada) [1946] A.C. 32."* The Court further held that a proviso must be construed harmoniously in relation to the main enactment.

21. The principles of interpretation of statues invoked by the Gujarat High Court in ***Gujarat Gypromet*** (supra) are instructive. I, therefore, consider it appropriate to set out herein below the relevant extract from the said judgment:

> *"11. Before undertaking the exercise of interpreting the said provisions, it would be useful to notice some of the decisions of*

the Hon'ble Supreme Court on the principles of interpretation of statute.

In the decision reported in AIR 2003 SC 511 (Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd.), the following observations were made by the Hon'ble Supreme Court:

> *26. It is also well settled that a beneficent provision of legislation must be liberally construed so as to fulfill the statutory purpose and not to frustrate it."*

In AIR 2001 SC 3527 (Steel Authority of India Ltd. v. National Union Water Front Workers), the Hon'ble Supreme Court observed that "it is now well settled that in interpreting a beneficial legislation enacted to give effect to directive principles of the State policy which is otherwise constitutionally valid, the consideration of the Court cannot be divorced from those objectives. In a case of ambiguity in the language of a beneficial labour legislation, the Courts have to resolve quandary in favour of conferment of, rather than denial of, a benefit on the labour by the legislature but without rewriting and/or doing violence to the provisions of the enactment" In a decision reported in AIR 1965 SC 1076 (Regional P.F. Commissioner v. Shibu Metal Works), which was also a case under the said Act, the Hon'ble Supreme Court observed in para 13 of the decision as follows:

> *"Reverting then to the question of construing the relevant entry in Sch. 1, it is necessary to bear in mind that this entry occurs in the Act which is intended to serve a beneficent purpose. The object which the Act purports to achieve is to require that appropriate provision should be made for the employees employed in the establishments to which the Act applies; and that means that in construing the material provisions of such an Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of the object.*

If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction. This rule postulates that there is a competition between the two constructions, each one of which is reasonably possible. This rule does not justify the straining of the words or putting an unnatural or unreasonable meaning on them just for the purpose of introducing a broader construction."

Considering the statement of objects and reasons for enactment of the said Act and also as held by the Hon'ble Supreme Court in the case of Regional P.F. Commissioner (supra) there is little scope for doubt that the said Act is a beneficent legislation and the provisions contained therein should be interpreted accordingly".

22. The Gujarat High Court in ***Gujarat Gypromet*** (supra) has analysed the definition of the expression "basic wages" in para 12 and 13 of the judgment, with which I respectfully agree for the reasons aforesaid. The same reads as follows:

*"12. **Reverting back to the provisions of the said Act, one finds that section 2(b) of the said Act defines "basic wages" to mean all emoluments.** The term emoluments has not been defined under the Act. Webster's New Twentieth Century Dictionary (unabridged) Second Edition describes word "emoluments" as : 1. the profit arising from office or employment; that which is received as compensation for services; payment received for work; wages, salary, fees; 2. advantage, gain in general. **It is thus clear that term 'emolument' includes variety of benefits received by an employee for having rendered services. Various allowances such as lunch allowance, medical allowance, conveyance***

allowance and house rent allowance paid by the employer and received by the employees for having rendered the service would be covered under the term 'emoluments'. *Once a payment is held to be 'emolument' the same becomes part of "basic wages" of the employee by virtue of definition of the term "basic wages" under section 2(b) of the said Act, unless it falls under any of the exceptions provided therein. The Legislature included all emoluments in the definition of term "basic wages". Only in cases where exception was sought to be made, the definition "basic wages" itself carved out such exceptions by providing that "basic wages" shall not include amounts such as the cash value of any food concession, any dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance as also any presents made by the employer. ...."*

*"13. .... **The term basic wages under section 2(b) of the said Act does not permit any ambiguity and the plain intention of the Legislature appears to be to include all emoluments other than those which are specifically excluded. I do not find any warrant to interpret section 2(b) of the said Act to exclude the allowances such as medical allowance, lunch allowance and conveyance allowance from the definition of term "basic wages". There is nothing in the said definition that the Legislature intended that the benefits paid to the employees under the said headings are to be excluded for the purpose of the term "basic wages".** As pointed out earlier, the term "basic wages" is defined as to mean all emoluments which are earned by an employee. In cases where the Legislature intended certain benefits to be excluded from the meaning of the term "basic wages" the same have been specifically provided for".*

(Emphasis supplied)

23. Consequently, even if one were to accept the petitioners submission that "canteen allowance" is not "*cash value of any food concession*", because it is a cash payment and no subsidized food is provided by the

petitioner, the "canteen allowance" cannot be construed as "any other similar allowance" payable to the employee in respect of his employment or of work done in such employment. Since the "canteen allowance" is a cash payment which is earned by the employees, i.e., they have a right to demand and receive it under the terms of a binding settlement, and the same is earned by the employees while on duty and because of the duty rendered by the employees, it is nothing - but a part of the "basic wages".

24. The "canteen allowance", in the present case, is payable to all the permanent employees and, therefore, the test evolved by the Supreme Court in ***Bridge & Roofs Co. Ltd. v. Union of India***, AIR 1963 SC 1474 stands satisfied. In that case, the Supreme Court had held that whatever allowances are payable to all the permanent employees, would be included in the definition of basic wages and those which are not paid/payable to all the employees are excluded therefrom. The reason for exclusion of house-rent allowance, overtime allowance, bonus and commission or any other similar allowance i.e. which is similar to commission payable to the employee in respect of his employment or of work done in such employment, from the definition of "basic wages" appears to be, that the aforesaid allowances could be employee-specific, and would generally not be payable to all the permanent employees.

25. I am, therefore, of the view that canteen allowance, in fact, forms part of the basic wages and there is no question of it being considered as *"cash value of any food concession"*. The decisions of the Bombay and Gujarat High Courts in ***Tata Hydro Electric Supply*** (supra) and ***Reliance Industries Ltd.*** (supra) do not advance the case of the petitioner, because they

proceeded on the basis that the expression "*cash value of any food concession*" pre-supposes the grant of food concession of which the cash value is determined. There may be no quarrel with the said proposition. However, neither of these decisions have explored the definition of the expression "basic wages" contained in section 2(b) and, in particular, the issue whether canteen allowance forms part of the basic wages, or not.

26. So far as the submission that ***Reliance Industries Ltd.*** (supra) has considered the decision in ***Gujarat Gypromet*** (supra) is concerned, a perusal of para 31 of the judgment in ***Reliance Industries Ltd.*** (supra) shows that the Court while deciding the same, only sought to distinguish the said judgment on facts. In para 31 of the said decision, the Court observed as follows:

> "*31. A very heavy reliance was placed by Mr. Majumdar on the decision of this Court in the case of Gujarat Cypromet Ltd. (supra). The said decision is, however, distinguishable on facts. In that case, various allowances such as lunch allowance, medical allowance, conveyance allowance and house rent allowance paid by the employer and received by the employees for having rendered the services were held to be covered under the term 'emoluments' and once the payments are held to be emoluments, the same become part of basic wages of the employees by virtue of definition of the term 'basic wages' under sec. 2(b) of the said Act. It is not the question before the Court as to whether all these allowances can be said to be cash value of food concession, and hence, they are deemed to be dearness allowance. Once, this Court having come to the conclusion that the canteen subsidy is not amounting to cash value of food concession it can never form part of dearness allowance and hence it would not fall within the ambit of either Sec. 2(b) of the said Act or the Explanation-I to Sec. 6 of the said Act.*"

27. From the above, it appears that the Court while deciding ***Reliance Industries Ltd.*** (supra) did not go into the issue whether, *inter alia*, lunch allowance i.e. canteen allowance or tiffin allowance – by whatever name it is called, is a part of the "basic wages" under section 2(b) of the Act.

28. In ***Gujarat Gypromet*** (supra), the Gujarat High Court also referred to and relied upon the decision of the Bombay High Court in ***Hindustan Lever Employees Union v. Regional Provident Fund Commissioner & Anr.***, 1995 (II) LLJ 279 and ***Bridge & Roofs Co. Ltd.*** (supra). The Gujarat High Court in para 15 observed as follows:

> *"15. In the view that I have taken, I take inspiration from a decision of the Bombay High Court reported in (Hindustan Lever Employees Union v. R.P.F.C. & Anr.) in which it was held that in context of the term "basic wages" as defined under section 2(b) of the said Act* ***unless the payment falls in any one of the specifically mentioned excepted categories, every emolument which is earned by the 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 must be included within basic wages.*** *Even the decision relied on by Shri K.M.Patel reported in AIR 1963 SC 1474 (supra), the Hon'ble Supreme Court was pleased to observe that "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 exception to this definition, there would have been no difficulty in holding that production bonus, whatever be its nature would be included within this terms .... ". (emphasis supplied)*

29. The Gujarat High Court held that the Act is a beneficent legislation and if two views are possible, the Court would take the view which would further the object of the Act and the one which would be in favour of the workers, rather than adopt an interpretation which would defeat the object of the Act. I agree with this proposition and the view I take would further the object of the Act. As noticed above, to take the contrary view would be to defeat the object of the Act as the employer would invent several "allowances" so as to reduce the element of "basic wages" and, consequently, reduce the liability towards provident fund.

30. The decision in ***Manganese Ore (India) Ltd.***, in my view, is of no avail to the petitioner. The Supreme Court rejected the appellants submission that the management was entitled to deduct, from the minimum wages, the cash value of the grain concession. By placing reliance on the provision contained in the Minimum Wages Act - which prohibits payment of wages in kind, unless there is a notification by the appropriate government under section 11(3) of the said Act, the Supreme Court observed:

> *"There cannot be a wage in kind under the scheme of the Act unless there is a notification by the appropriate Government Under Section 11(3) of the Act. Section 4(1)(iii) mentions only such "cash value of the concession" as has been authorised "wage in kind" under Sub-section 3 of Section 11 of the Act. It is only the appropriate Government which can authorise the payment of minimum wages partly in kind. In the absence of any notification by the appropriate Government for the supply of essential commodities at concessional rates the cash value of such concessions cannot be treated as wage in kind and cannot be deducted from the minimum wages which have to be paid in*

cash Under Section 11(1) of the Act. There being no notification by the appropriate Government Under Section 11(3) of the Act, the appellant cannot take any advantage from para 2 of the notification or from the provisions of Section 4(1)(iii) of the Act. We, therefore, reject the contention raised by Mr. Sanghi".

31. So far as the reliance placed on the two departmental circulars is concerned, in my view, they are of no avail. The said departmental circulars cannot override the statutory interpretation required to be given to the provisions of the Act.

32. For all the aforesaid reasons, I am of the view that the petitioner is liable to compute and pay the provident fund contribution by taking into account the "canteen allowance" being paid to the employees in terms of the binding settlement with effect from 01.10.1995. The said liability arises, even if the petitioner's submission that the canteen allowance cannot be construed as "*the cash value of any food concession*" is accepted, because the canteen allowance is a part of the "basic wages" itself. Consequently, I find no merit in this petition and dismiss the same with costs quantified at Rs.10,000/-.

(VIPIN SANGHI)
JUDGE

JULY 22, 2013
sr