Of Basic Wages

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Under the provisions of Employees Provident Funds & Miscellaneous Provisions Act, 1952 "basic wages" are pivotal or rather centric because they alone are susceptible to PF deductions. Unfortunately, the judiciary in spite of the basic case of *Bridge and Roof Company (India) Limited vs. Union of India* – AIR 1963 SC 1474 – went several steps further and held that all emoluments including lunch allowance, medical allowance and conveyance allowance are to be treated as basic wages for the purpose of PF deduction.

The *Gujarat case* – *Gujarat Gypromet Limited vs. Assistant P.F Commissioner* – 2005 Lab.IC 422 is a radical one in this regard. With due deference to the Lordships of the Gujarat High Court, it is submitted that the whole issue has been rendered as a cauldron of confusion. It is said that the entire exercise rotated around the principles of interpretation, more precisely the beneficent rule of construction. The net outcome of all this is that the poor employer is going crazy by conflicting verdicts.

The Gujarat High Court, before undertaking the exercise of interpreting this provision, referred to certain observations of the Supreme Court on the principles of interpretation of statutes. In AIR 2003 SC 2971 (*Union of India vs. Rajiv Kumar*) the Supreme Court has made the observations that "it is well settled principle in law that the Court cannot read anything into a statutory provision to rewrite a provision which is plain and unambiguous. A statute is an edict of Legislature. The language employed is the determinative factor of legislative intent of policy makers". Then it referred to the case reported in AIR 2003 SC 511 (*Bhav Nagar University vs. Palitana Sugar Mills*), and again it referred to AIR 2001 SC 3527 (*Steel Authority of India limited vs. National Union Waterports Workers*), wherein the Supreme Court ruled that "it is now well settled that in interpreting a beneficial legislation enacted to give effect to Directive principles of State Policy which is otherwise constitutionally valid, the consideration of the court cannot be divorced from those objectives. In case of ambiguity in the language of a beneficial labour legislation, the court has to resolve quandary in favour of conferment of rather than denial of a benefit on the labour by the legislative but without rewriting and / or doing violence to the provisions of the enactment". Then lastly it referred to the case reported in AIR 1965 SC 1076 (*RPFC vs. Shibu Metal Works*) as regards the cannons of interpretation. However, it is humbly submitted that these principles would have different interpretation in different situations and vastly important would be the "context".

In common parlance, in the matter of interpretation we deal with serious matters lightly and the frivolous matters seriously because generally the "grey areas" or "technicalities" in statutes have been used for shielding something, which we want to project. On basic wages it was expected that we must have given considerable gravitas to emanate from its verdict in Bridge & Roof Company (India) Limited case and analyse this concept in a fashion that would have fitted with this holding of the Supreme Court.

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In this regard, we have to refer to the concept of "basic wages" as contained in the Act. There is no

doubt that "basic wages" as defined therein mean 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. Had there been no exception to this definition then in that event there would not have been any difficulty in holding that whatever other payments are there as made to an employee would have been included in "basic wages". The difficulty surfaces because the definition of basic wages also provides that certain things would not be included in the term basic wages and these are contained in three clauses. The presents made by the employer and the cash value of any food concession, etc. are excluded although there is no logical patterns in these exclusions.

Then comes 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. Having excluded dearness allowance from the definition of "basic wages" Section 6 then provides for inclusion of dearness allowance for the purposes of contribution. But that is clearly the result of the specific provision in Section 6. The aforesaid position prompts us to try to discover some basis for exclusion in clause (ii) as also the inclusion of dearness allowance and retaining allowance in Section 6.

It seems that the basis of inclusion in Section 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 Section 6 but whatever is not payable by all concerns may not be earned by all employees of a concern is excluded for the purpose of contribution. Dearness allowance is payable in all concerns either as an addition to basic wages or as a part of consolidated wages. Similarly retaining allowance is payable to all permanent employees in all seasonal factories like sugar factories, etc. On an intense focus it would be revealed that house rent allowance, overtime allowance, 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 contract of employment. It, therefore, seems that the basis for the exclusion in clause (ii) of the exception in Section 2(b) is that all that is not earned in all concerns or by all employees of a concern is excluded from the 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 Section 6 for the purpose of contribution. On similar logic production bonus is exempted from the definition of "basic wages". This has been the classic holding of the Supreme Court as contained in *Bridge and Roof Company (India) Limited vs. Union of India* – 1962 (2) LJ 490, as referred hereinabove, and *Jay Engineering Works Limited vs. Union of India* – 1963 (2) LLJ 72.

As we all know, our Supreme Court, probably the strongest in the world, has a unique reputation of giving judgments and delivering verdicts which display a rare jurisprudential vision and in this function it ignores unnecessary technicality, grammatical pedantry or logical prevarication.

The aforesaid two classical holdings have very aptly unfolded the interwoven components of basic wages vis-à-vis their susceptibility to the PF contribution. The theory that has been propounded is very obvious and simple and is good for universal application. It has been ruled that whatever is payable in all concerns and earned by all permanent employees is included for their purpose of contribution under Section 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 irrespective of any thing. This is the acid test which has been laid down by the Apex Court but unfortunately the enforcement mechanism of the department does not take into account this *ratio decidendi* and indiscriminately impose contribution liability on the employer for certain payments without knowing the nature thereof. Acting on the rationale of the supra cited case of Supreme Court, the Madras High Court in the case of *Regional commissioner, EPF, Tamil Nadu and Pondicheri vs. Management of Southern Alloy Foundries (P) Ltd.* – 1982 (1) LLJ P.28 – held that definition of term "basic wages" excluded a number of allowances grouped in sub-clause (ii) of sub-section (b)

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of Section 2 and that under Section 6 dearness allowances and retaining allowances were taken into account for the purpose of calculating the contribution.

The Madras High Court in the case of *R Ramanathan Chettiar Jewellers, Madurai vs. Regional PF Commissioner, Madurai* – 1988 (ii) LLJ 045 – while referring to the cases of *Associated Cement Co. Ltd. & Ors vs. R.M Gandhi, Regional PF Commissioner* – 1995 III LLJ (Suppl.) 368; *Vayitri Plantation Ltd. vs. Baby Mathew & Ors.* 1944 (1) LLJ 1132 (Ker.); *M/s Haribar Poly Fibres vs. The Regional Director* 1984 (II) LLJ 475; *Amal Kumar Ghatak vs. Regional PF Commissioner & Ors.* 1980 (II) LLJ 308 Cal; *Gresham & Co. vs. CPFC, New Delhi* 1978 (II) LLJ 95 (Del) and AIR 1959 SC 1095 ruled that where the special allowance is not paid under contract of employment settlement or award but paid purely out of management's own will and pleasure then such special allowance would not be taken into account for the purpose of calculating contribution payable under the Act. Such a special allowance shall not form part of the basic wages. This ruling lays stress that a payment, which is not of a regular nature and is paid purely in the discretion of the management, would not be available for PF contribution. It is also the one, which is not paid in all concerns and earned by all employees. In this case the court repelled the argument that the special allowance was paid for the services rendered and was regulated by the terms of the contract of employment. Similar would be the case with the lump sum and ad hoc payments, which are made to eligible employees and not to all, and sundry.

The Rajasthan High Court in the case of *DCM Limited vs. Regional PF Commissioner* – 1988 LLR 532 – held that only those allowances which are of the nature specified in the exclusion clause of Section 2(b) of the Act would be considered to have been excluded from its preview. It further held that the good work allowance or reward as used by the employer is not one of those excluded allowances, thus the Provident Fund contribution would be payable on the payment of this allowance. It further held that since the good work allowance had not been considered to be in the nature of overtime allowance so it could not be considered that it was of similar nature as overtime. With due deference, it is agreed upon that this is not a good law and it definitely needs a re-examination. This holding is certainly contrary to the principles as enunciated by the Supreme Court in the case of *Bridge and Roof Company (India) Ltd. vs. Union of India* 1962 (5) FLR 423. The payment of good work allowance or good work reward could not be flatly done to all the employees of the concern or all the employees could earn it nor could it be regulated by the terms and conditions of the contract of employment. It was definitely a payment, which was made to a few eligible employees because technically speaking it must have been an overtime payment but the management must not have shown it so because of other provisions of law. Even otherwise, in the backdrop of the aforesaid decisions, more particularly that of Apex Court, the payment of this special allowance or good work reward, by no stretch of imagination, could be conceived as attracting PF contribution. It is also doubtful whether Supreme Court case was brought to the notice of His Lordship of the Rajasthan High Court.

A dispassionate perusal of the aforesaid legal position would reveal that law on the payment of allowances other than the Dearness Allowance as far as PF contribution is concerned is well settled and crystallised and the parameters as set out by the Apex Court would take care of all fact situations and contingencies of payments vis-à-vis "bias wages".

With the aforesaid elongated and prolonged discussion, the underlying thesis of the article is to set out now the incontrovertible position of judicially perceived notions on the components of the basic wages with necessary exclusions and inclusions thereof under the Act. The acid tests as laid down by the Supreme Court must dispel all misgivings. I maintain that there is now a conceptual clarity on the proposition. In the premises, the Gujarat case law may not be food law because it has held that except house rent allowance all allowances viz. Lunch Allowance, Medical Allowance, Conveyance Allowance are covered under term emoluments and therefore part of 'basic wages'.

However, the enforcement agencies of the department in its over exposure, mediocrity and large performance have killed the subtleties, sweeps and swirls of social rhetoric of this enactment by their stubborn insistence for treating every payment to the employees as susceptible to PF contribution. This must end.

Let us have flexibility of labour laws so that investment is encouraged and employment is generated. We should debunk the theory of rigidities in the labour market. ❐