arrived at by the trial Court, we fully agree with the same and the plaintiff is entitled to the said amount as granted by the trial Court.

**12.** In the result, the impugned judgment of the High Court in First Appeal No. 2038 of 1983 dated 7-10-2002 is set aside and the judgment and decree of the trial Court in Civil Suit No. 30 of 1977 dated 14-12-1982 is restored. The Civil Appeal is allowed with no order as to costs. *(SBS)* *Appeal allowed.*

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## SPECIAL CIVIL APPLICATION

*Before the Hon'ble Mr. Justice K. A. Puj*

RELIANCE INDUSTRIES LTD. v. REGIONAL PROVIDENT FUND COMMISSIONER, VADODARA & ANR.*

**Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) — Sec. 6 *Explanation-1* — Question whether cash canteen subsidy allowed to employees amounts to "cash value of any food concession" within *Explanation-1* to Sec. 6 — On facts found, subsidy is paid in lieu of subsidised canteen facilities provided earlier; subsidy does not change with rise in cost of living; subsidy not satisfying 'test of universality' — Held on facts, subsidy does not amount to cash value of any food concession within *Explanation-1* to Sec. 6, hence same not included in dearness allowance, therefore, employer not liable to pay contribution on same — Orders by Regional P. F. Commissioner and Appellate Tribunal set aside.**

કામદાર ભવિષ્યનીધિ અને પરચૂરણ જોગવાઈઓ અધિનિયમ, ૧૯૫૨ — કલમ ૬ સ્પષ્ટીકરણ-૧ — પ્રશ્ન એ કે, કલમ ૬ સ્પષ્ટીકરણ-૧ અંતર્ગત કામદારોને અપાતી રોકડ કેન્ટિન સહાય ''ખાદ્ય પદાર્થની રોકડ સહાય'' પેટે ગણાય — હકીકતો ઉપરથી જણાયું કે, આ રોકડ સહાય જે અગાઉ અપાતી રાહતદરની કેન્ટીન સગવડોના બદલે હતી તેમાં જીવન જરૂરી ચીજોના વધારા સાથે ફેરફાર ન થઈ શકે; (રોકડ) સહાય ''વૈશ્વિક ગુણવત્તા''ને સંતોષતી નથી — વધુમાં, હકીકતો ઉપરથી ઠરાવ્યું કે, (રોકડ) સહાય કલમ ૬ સ્પષ્ટીકરણ-૧ અંતર્ગત ખાદ્યપદાર્થની રોકડ સહાય તરીકે ન ગણાય, જેથી તેને મોંઘવારી ભથ્થામાં ઉમેરી ન શકાય, તેથી માલિક તેની ઉપર પોતાનો ફાળો આપવા જવાબદાર નથી — પ્રાદેશિક ભવિષ્યનિધિ કમિશનર અને અપીલ પંચનો હુકમ રદ કરવામાં આવ્યો.

Section 6 of the said Act deals with contributions and matters which may be provided for in scheme. It talks of the contributions to be made by the employer to the fund on the basic wages, dearness allowance and retaining allowance, if any. *Explanation-1* to Sec. 6 of the said Act creates a deeming fiction. It says that for the purposes of this Section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employees. (Para 26)

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*Decided on 10-1-2011. Special Civil Application No. 4294 of 2000.

It is noticed from the pleadings that the petitioner had earlier provided canteen subsidy as prescribed under the Factories Act, operative on 'no profit no loss' basis, thereby only those who desire to avail such facilities use to take lunch/ snacks during the working hours by exchanging coupons of subsidized value. All the employees were not availing this facility. Since, the non-supervisory employees posted outside the complex were not having such subsidized facility, they were paid Rs. 3/- per day in lieu of such subsidized facility. (Para 27)

However, employees posted inside the plant premises, where subsidized canteen facilities were available were given an option to either avail the canteen facility or draw canteen subsidy. There were still few employees who were not drawing canteen subsidy but were availing subsidized canteen facility. This would show that the payment of such subsidy could not be generalized and treated as cash value of food concession, forming part of wages as envisaged under the Act. It has also been noticed from the pleadings that canteen subsidy has been linked to actual presence and proportionate deductions were made in case an employee remains absent from work for mores than a specified period because the nature of canteen subsidy is not for neutralizing the effect of increase in the cost of living index but is purely in the nature of reimbursement of part of expenses incurred while at work for food and tea/coffee during working hours. The payment of canteen subsidy remains constant and would not vary (either increase or decrease) along with the change in the cost of living index. Thus, while excluding any dearness allowance or any such cash payment from the purview of basic wages, the Legislature has made it very clear that it must be on account of a rise in the cost of living. If it is not linked up with any increase in the cost of living index, it cannot be said to be a cash value of any food concession, and hence, it cannot be included in dearness allowance. Another issue which is made very clear by the decision of the Apex Court in *Manipal Academy of Higher Education,* (AIR 2008 SC 1951) is that the test of universality must also be satisfied. (Para 27)

So far as the present case is concerned, canteen subsidy cannot form part of dearness allowance as all the employees are not in receipt of subsidy, besides it is neither linked with the consumer index nor to neutralize the rise in prices. Thus, the same cannot be included for the purpose of contribution. As referred to earlier, in the decision of the Apex Court in the case of *Bridge and Roof Company (India) Ltd.,* (1962 (2) LLJ 490), it has been clearly held that whatever is not payable by all concerned or may not be earned by all employees of a concern, is excluded for the purpose of contribution. (Para 28)

***Cases Relied on :***

(1) *Bridge and Roof Company (India) Ltd. v. Union of India*, 1962 (2) LLJ 490

(2) *Manipal Academic of Higher Education v. Provident Fund Commissioner*, AIR 2008 SC 1951

***Cases Referred to :***

(1) *Tata Power Company Ltd. v. Regional Provident Fund Commissioner,* 2008 (3) LLJ 992 (Bom.)

(2) *Regional Provident Fund Commissioner and Pondicherry State Employees' Provident Fund Organisation v. Wipro Ltd., Rep. by Export Business Manager and the Presiding Officer, Employees' Provident Fund Appellate Tribunal*, 2009 (4) MLJ 972

(3) *Gujarat Cypromet Ltd. v. Assistant Provident Fund Commissioner*, 2004 (3) CLR 485

(4) *Regional Provident Fund Commissioner v. Shibu Metal Works,* AIR 1965 SC 1076

*K. S. Nanavati*, Sr. Advocate with *Kunal Nanavati* and *Maulik R. Shah*, for Nanavati Associates, for Petitioner No. 1.

*Niral R. Mehta*, for Respondent No. 1.
*N. K. Majmudar*, for Respondent No. 2.

**K. A. PUJ, J.** Leave to amend the cause-title of the petition by substituting the name of Reliance Industries Limited in place of Indian Petrochemicals Corporation Limited.

**2.** The petitioner has filed this petition under Arts. 226 and 227 of the Constitution of India challenging the order dated 20th January, 2000 passed by the Appellate Tribunal, New Delhi, dismissing the appeal of the petitioner and confirming the orders dated 25th June, 1998 passed by the Regional Provident Fund Commissioner, Vadodara under Sec. 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the said Act') and the order dated 1st June, 1999 passed by the Regional Provident Funds Commissioner rejecting the Review Application filed by the petitioner. The petition was admitted and interim order was granted in terms of Paragraph 23(C) of the petition.

**3.** It is the case of the petitioner that the petitioner, namely, erstwhile Indian Petrochemicals Corporation Limited, a Public Sector Undertaking was engaged in manufacturing and selling of various petrochemicals, and for the said purpose, it has various plants and offices situated all over the country including at Baroda and having its head office at Baroda. The respondent No. 2 is an Association representing a Section of the employees of the petitioner to whom canteen subsidy was given by the petitioner.

**4.** The short dispute involved in this petition is in relation to the nature of payment of cash subsidy to the employees of the petitioner–whether it amounts to the cash value of any food concession?

**5.** The respondent No. 2, for the first time, *vide* its letter dated 21st June, 1996, requested the petitioner to consider Rs. 475-00 given as canteen subsidy as dearness allowance and to include the same in addition to the normal dearness allowance. The said request was made on the basis that under an *Explanation-1* to Sec. 6 of the said Act, dearness allowance shall

be deemed to include the cash value of any food concession allowed to employees. Pursuant to the said letter, the respondent No. 1, *vide* his letter dated 5th July, 1996, called upon the petitioner to give comments in order to take necessary action. The petitioner *vide* its letter dated 5th September, 1996 submitted before the respondent No. 1 that the claim of the respondent No. 2 is not tenable in view of the fact that the canteen subsidy given to the employees is not an item of that nature which falls within the *Explanation-1* to Sec. 6 of the said Act. The respondent No. 1 thereafter issued a show-cause notice dated 4th October, 1996 under Sec. 7A of the said Act calling upon the parties to represent their case in order to hold an inquiry in respect of the said issue. The petitioner, on 22nd November, 1996 submitted before the respondent No. 1, a reply pointing out that it would not be considered as dearness allowance. The petitioner furnished all informations called for by the respondent No. 1 along with its reply on 20th December, 1996. The respondent No. 2 has also made its representation before the respondent No. 1 contending that the petitioner is liable to make provident fund contribution in respect of canteen subsidy of Rs. 475-00 per month with retrospective effect. The respondent No. 1, after hearing the parties, passed an order on 25th June, 1998 holding therein that, "canteen subsidy being in the form of dearness allowance would attract provident fund, and therefore, the establishment is liable to pay provident fund on canteen subsidy since June, 1996".

**6.** Being aggrieved by the said order, the petitioner moved an application for review of the order under Sec. 7B(1) of the said Act on the ground that, since in view of various decisions of the Apex Court, the canteen subsidy given to the employees does not fall within the definition of basic wages as defined under Sec. 2(b) of the said Act, and therefore, it cannot form part of dearness allowance as envisaged under Sec. 6 of the said Act. The said Review Application was, however, rejected by the respondent No. 1 *vide* his order dated 1st June, 1999.

**7.** Being further aggrieved by the order dated 25th June, 1998 passed under Sec. 7A of the said Act and the order dated 1st June, 1999 rejecting the Review Application, the petitioner filed an appeal under Sec. 7I of the said Act before the Appellate Tribunal, New Delhi. The respondent No. 2 filed its reply on 1st November, 1999. The petitioner also filed its rejoinder justifying that the petitioner is not liable to make provident fund contribution in view of the fact that canteen subsidy paid to its employees is not a cash value of any food concession as envisaged in Explanation-1 to Sec. 6 of the said Act. After hearing the parties, the Appellate Tribunal, New Delhi, *vide* its order dated 20th January, 2000, dismissed the said Appeal and confirmed the orders dated 25th June, 1998 and 1st June, 1999 passed by the respondent No. 1. The petitioner, thereafter, filed the present petition

before this Court challenging the aforesaid orders of the respondent No. 1 as well as the Appellate Tribunal, New Delhi.

**8.** Mr. K. S. Nanavati, the learned Senior Counsel appearing for Nanavati Associates for the petitioner has submitted that the impugned orders passed by the respondent No. 1 as well as the Appellate Tribunal are absolutely illegal, unjust, perverse and contrary to the settled principles of law, and therefore, deserve to be quashed and set aside. He has further submitted that pursuant to the settlement dated 9th August, 1995, the rate of canteen subsidy was increased from Rs. 300-00 to Rs. 475-00 per month effective from 1st July, 1995. However, it was not agreed between the parties in the settlement that the canteen subsidy was to be paid either as part of basic wages or as part of dearness allowance nor this rise was due to rise in cost of living. Despite this fact, the respondent No. 1 as well as the Appellate Tribunal have held that the canteen subsidy is deemed to be dearness allowance, and therefore, the petitioner is liable to pay provident fund contribution. Since, there is nothing on record or in the settlement to show that canteen subsidy was agreed to be paid as dearness allowance, there is no warrant for the respondent No. 1 as well as the Appellate Tribunal to hold that the canteen subsidy must be deemed to be dearness allowance, and should therefore, be included for the purpose of arriving at the employees contribution under Sec. 6 of the said Act.

**9.** Mr. Nanavati further submitted that under the provisions of the Factories Act, the petitioner is required to provide canteen facility operated on "no profit no loss" basis. The petitioner had started to give subsidised food facility purely as a welfare measure. The idea behind giving such facility is not to extend any pecuniary benefit to the employees but it is only to give them a better working condition and healthy diet. He has further submitted that many other companies have practised of providing milk to their employees while on duty so that they can overcome many of the potential occupational hazards. He has also submitted that all such welfare steps of the employer are not part of employment conditions, but are the measures to ameliorate working conditions of the employees. In view of the said fact, the canteen subsidy given to the employees cannot be said that it is cash value of any food concession.

**10.** Mr. Nanavati further submitted that canteen subsidy given is nothing but reimbursement of expenses to the employees for bringing home-made food or taking non-subsidised canteen food for lunch during the duty hours. In fact, canteen subsidy is not earned by all the employees of the petitioner, and therefore, whatever is not payable or may not be earned by all employees is excluded for the purpose of contribution. The canteen subsidy is linked with actual presence of an employee. If an employee remains absent from

work for more than specified period on account of leave with wages, in that case, although the employee is paid his wages, proportionate deductions are made from canteen subsidy. Further, canteen subsidy is not for neutralizing the effect of price-rise, but it is reimbursement of part of the expenses incurred while at work towards food and tea/coffee during the working hours. Further, the canteen subsidy is not paid on account of rise in cost of living index. In fact, the canteen subsidy remains stagnant and do not vary with change in cost of living index. He has, therefore, submitted that the canteen subsidy is not paid as a part of dearness allowance or in that nature, and hence, it cannot be deemed to be dearness allowance.

**11.** Mr. Nanavati further submitted that the canteen subsidy is neither a dearness allowance nor it has any ingredient or characteristics of dearness allowance. In fact, the respondent No. 1 has, in its impugned order, held that the canteen subsidy is not received by all the employees in cash. The canteen subsidy is not at all increasing or decreasing on quarterly basis and/or yearly basis, and therefore, it cannot be linked with dearness allowance. The canteen facility is paid because the petitioner is not able to provide the canteen facility at all the locations, and therefore, the canteen subsidy is introduced.

**12.** Mr. Nanavati further submitted that clause (i) of Sec. 2(b) of the said Act excludes the cash value of any food concession from the definition of basic wages. In the facts of the present case, the employees do not earn the canteen subsidy. Since, the nature of canteen subsidy provided by the petitioner does not fall within the definition of basic wages, nor does it qualify as dearness allowance, the *Explanation-1* to Sec. 6 of the said Act is not attracted. He has, therefore, submitted that if both the aforesaid provisions *i.e.* Sec. 2(b) and Sec. 6 of the said Act are read together, in that event, looking to the facts of the present case, the canteen subsidy given to the employees cannot be said to be dearness allowance, and accordingly, the petitioner is not liable to make provident fund contribution on canteen subsidy. He has, therefore, submitted that the respondent No. 1 has clearly erred in only interpreting Sec. 6 of the said Act in isolation though the respondent No. 1 having held the canteen subsidy as not earned by all the employees. He has, therefore, submitted that the impugned orders deserve to be quashed and set aside. The expression "on the cash value of food concession" appearing in *Explanation-1* to Sec. 6 of the said Act is meant to cover those employees who are/were given concessions/free food items as part of their wages. The respondent No. 1 has failed to interpret this in light of these submissions of the petitioner.

**13.** Mr. Nanavati further submitted that the definition of wages is similarly defined under the provisions of the Employees' State Insurance

Act, 1948. It has been held by various High Courts that, amounts paid by way of allowances towards milk, tea and eggs to the employees cannot be considered as wages under the definition of Sec. 2(22) of the Employees' State Insurance Act. In the present case, the canteen subsidy is given towards tea, coffee, snacks, lunch, dinner, etc. Therefore, in the present case also, the canteen subsidy given to the employees to give them the food at subsidised rate cannot be considered as basic wages as defined under Sec. 2(b) of the Act.

**14.** In support of his submissions, Mr. Nanavati relied on the decision of the Bombay High Court in the case of *Tata Power Company Ltd. v. Regional Provident Fund Commissioner,* 2008 (3) LLJ 992 (Bom.) wherein, the question before the Bombay High Court was, whether the food allowance agreed to be paid by the petitioner to its employees under a settlement is cash value of any food concession allowed to the employees, and therefore, liable to be included for the purpose of calculating the employer's contribution to the provident fund. While allowing the said petition and quashing the orders passed by the Provident Fund Commissioner as well as the Appellate Tribunal, the Bombay High Court held that there has been a practice in industrial employment in this country where the cash value of various benefits such as concessional supply of foodgrains is computed while reckoning the wages payable. Under the Minimum Wages Act, the cash value of a concession always means the amount by which the value of an essential supply is reduced when supplied. Therefore, the term "cash value of any food concession" allowed to the employee means such value of the component by which the price of the item is reduced. This necessarily postulates the provision of the supply of an amenity such as food-grain for, without such supply, it would not be possible to calculate the value of any food concession allowed to the employee. There being no supply of any food by the petitioner, the payment of food allowance cannot be treated as the cash value of food concession allowed to the employee. The Court further held that, '…Indeed if the Parliament intended to include food allowance which is not related to the supply of any food as dearness allowance it could have simply said so by adding that any food allowance would be treated as part of the dearness allowance'.

**15.** Mr. Nanavati further relied on the decision of the Madras High Court in the case of the *Regional Provident Fund Commissioner and Pondicherry State Employees' Provident Fund Organisation v. Wipro Limited Rep. by Export Business Manager and The Presiding Officer, Employees' Provident Fund Appellate Tribunal,* 2009 (4) MLJ 972 wherein, the learned Single Judge held that cash value of any food concession is excluded from basic wages and further settlement entered is binding on the parties wherein

canteen subsidy was excluded from provident fund. Thus, the appellant cannot make a demand for contribution under the Act. On being challenged the said judgment of the learned Single Judge, the Division Bench of the Madras High Court held that as per the terms of the contract, canteen subsidy has been provided in lieu of canteen, and in the event of the management being required to provide a canteen for any reasons, canteen subsidy paid will be withdrawn. Thus, from the said fact, it is established that canteen subsidy could not be included in wages as it is a form of cash value of any food concession. The Court further held that the legal propositions applicable to canteen subsidy are equally applicable to performance linked compensation and such compensation also would not attract provident fund contribution. The Court, therefore, does not find any infirmity in the order of the learned Single Judge and hence dismissed the appeal.

**16.** Mr. Nanavati further relied on the order passed by the Employees' Provident Fund Appellate Tribunal, New Delhi, camp at Ahmedabad, on 16th April, 2010 in the case of *M/s. Gujarat Alkalies and Chemicals Ltd. v. Regional Provident Fund Commissioner, Regional Office, Vadodara,* wherein, the Tribunal held that the allowances paid to the employee have not been treated as basic wages in the case of *Tata Power Company Ltd. v. R.P.F. Commissioner,* (supra). After quoting the ratio of the said decision, the Tribunal held that the payment of food allowance cannot be treated as the cash value of food concession allowed to the employees. The Tribunal has quashed and set aside the order passed by the Regional Provident Fund Commissioner.

**17.** In view of the facts and circumstances of the case and settled legal position, Mr. Nanavati strongly urged that the impugned orders passed by the respondent No. 1 as well as the Appellate Tribunal are contrary to the statutory provisions and not in accordance with the law laid down by various High Courts, which are again based on the decision of the Apex Court in the case of *Bridge and Roof Company (India) Ltd. v. Union of India,* 1962 (2) LLJ 490, and hence, deserve to be quashed and set aside.

**18.** An affidavit-in-reply is filed on behalf of the respondent No. 2. Mr. N. K. Majmudar, the learned Advocate appearing for the respondent No. 2, and basing his submissions on this affidavit-in-reply, submitted that the Employees' Provident Funds and Miscellaneous Provisions Act is a social security welfare legislation for industrial workmen. The Act tries to achieve its objectives by providing equal contribution of employer and also of employees for generating provident fund amount for such security monetary assistance. The contributions by the employer are determined as required under Sec. 6 read with *Explanation* below it of the said Act. Section 7A of the Act empowers the Regional Provident Fund Commissioner to hold

proceedings which are of judicial nature as per the said Act and to pass appropriate orders in accordance with the provisions of the said Act for determining the provident fund dues in case of default by employer. Accordingly, having heard the petitioner and the respondent No. 2 and having thoroughly applied his mind based on the evidence and submissions of the parties, the respondent No. 1 passed a proper and valid order in accordance with law directing the petitioner-Company to make provident fund contribution on cash canteen subsidy of Rs. 475-00 per month to its employees. The petitioner, in order to frustrate the purpose of the Act, made a review application before the respondent No. 1, and thereafter, filed an appeal before the Provident Fund Appellate Tribunal at New Delhi challenging the orders of the respondent No. 1. However, having considered the facts and the provisions of the said statute, more particularly, Sec. 6 of the Act and its *Explanation-1* dealing with the provident fund contributions, the Appellate Authority dismissed the appeal and confirmed the orders of the respondent No. 1 as legal and proper and directed the petitioner to comply with the provisions of Sec. 6, read with *Explanation-1* below it, for payment of provident fund contributions on Rs. 475-00 per month cash canteen subsidy paid to employees as cash value of concessional food under Explanation-1 to Sec. 6 of the said Act.

**19.** Mr. Majmudar further submitted that in order to escape its statutory obligation, the petitioner had indulged in protracted litigation to avoid its social security obligation by knocking the doors of this Court seeking an extraordinary writ remedy. The petitioner thereby had stripped to delay and defeat the very objective of the social security law and proper and legal orders passed by the statutory authorities under the said Act. He further submitted that the petitioner-Company, a large public sector establishment is covered under the Act. Since, beginning in petitioner-Company there was a practice by which food items in canteen such as lunch, snacks, tea, etc. were supplied to the employees at highly concessional/subsidised rate by the Company and the employees in other places outside Baroda plants were granted Rs. 300-00 per month in or around 1991 as a sort of allowance towards food, etc. as they were not provided concessional supply of food. Consequent upon negotiations between the management of the petitioner-Company and the Unions of workmen at Baroda, a statutory settlement under Sec. 18(3) of the Industrial Disputes Act, 1947 was reached in the course of conciliation proceedings. As per this conciliation settlement dated 9th August, 1985, the Company agreed to make cash payment of Rs. 475-00 per month as cash canteen subsidy in place of concessional food provided earlier to the employees. For all employees of the petitioner-Company at all places in all categories the cash canteen subsidy of Rs. 475-00 per month was payable. As the Company paid Rs. 475-00 per month, a monthly cash payment in

lieu of concessional/subsidised food, the payment of this amount of Rs. 475-00 per month cash canteen subsidy *i.e.* the cash value of concessional food became a statutory binding/obligation of the Company, since in accordance with the provisions of Sec. 18(3) of the Industrial Disputes Act, the settlement arrived at in the course of conciliation proceedings is binding to all parties to the dispute, to all existing workmen and also to those who may be subsequently employed. Thus, Rs. 475-00 per month paid by the Company as cash canteen subsidy in place of concessional subsidised food from August, 1995 is a statutory condition of service under the Industrial Disputes Act. For the purpose of provident fund contribution, Sec. 6 of the Act and its Explanation is the only Section which is absolutely statutory requirement and not controlled or subjected to any other provisions of the said Act or any other law, agreement, contract, etc. *Explanation-1* to Sec. 6 makes it abundantly clear that for the purposes of Sec. 6 of the Act, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee. For the purpose of Sec. 6, by inserting Explanation-1, the legislation has treated the cash value of food concession as dearness allowance. The word "also" includes suffixed to dearness allowance, clearly indicates that in addition to dearness allowance of any other nature cash value of food concession is also deemed as dearness allowance. He has further submitted that Sec. 6 and its Explanation-1 is a complete and independent Code by itself, provided by the said Act for provident fund contribution. Since, the Company refused to comply with the provisions of Sec. 6 and its Explanation, the respondent No. 2-Union had sought remedies available under Sec. 7A of the Act before the Regional Provident Fund Commissioner, Baroda. He has further submitted that even if the petitioner-Company is exempted provident fund scheme under the Act, as per Sec. 17(1-A)(a) of the Act, the provisions of Secs. 6, 7A, 8 and 14B of the Act shall apply to the employer of the exempted establishment in addition to such other conditions as may be specified in the notification granting such exemption and whether such employer contravenes or makes default in complying with any of the said provisions or conditions or any other provisions of the Act, he shall be punishable under Sec. 14 as if the said establishment had not been exempted. Accordingly, the petitioner-Company was bound to comply with the provisions of Sec. 6 of the Act and the *Explanation-1* below it.

**20.** Mr. Majmudar further submitted that the petitioner-Company is attempting to misrepresent and misconstrue the provisions of Sec. 6 of the Act and also the orders of the respondent No. 1 passed under Sec. 7A of the Act. The provident fund contributions as required under Sec. 6 of the Act are not confined and limited for basic wages only as defined under Sec. 2(b) of the Act, but in addition to such basic wages, provident fund

is also payable on dearness allowance. The basic wages and dearness allowance are two different components. Section 6 of the Act read with Explanation-1 below it deals with provident fund contributions. Provident fund contributions are payable not only on basic wages as defined but also on dearness allowance, which is deemed to include also the cash value of food concession as per *Explanation-1* to Sec. 6 of the Act. The Company cannot escape its statutory liability by referring to the definition of basic wages under the said Act. There is no question of referring to Sec. 2(b) of the Act for application of Sec. 6 for the purpose of provident fund contributions. He has further submitted that all the averments relating to those employees who were not provided concessional food earlier and who were compensated by some payment has no relevance or bearing with the present issue. The present issue under Sec. 7A of the Act for determination of the respondent No. 1 was for provident fund contribution relating to Rs. 475-00 per month cash canteen subsidy paid to all employees for value of concessional food as per statutory service condition as a result of statutory conciliation under the Industrial Disputes Act. As this amount of Rs. 475-00 per month from August, 1995 was paid as cash value of concessional food supply earlier to the employees, it requires provident fund contribution under Sec. 6 read with *Explanation-1*. He has further submitted that Sec. 6 or its Explanation or no other provisions of the Act provides, as claimed by the petitioner-Company, that whatever amount is not paid during leave is not wage or is not dearness allowance. The petitioner had tried to read or canvass what is not written in the Provident Fund Act or any other law. It cannot be said that since it is not paid during leave, the amount of Rs. 475-00 per month cash value of concessional food will not be deemed as dearness allowance. There is no such provision in the law as canvassed by the petitioner. In fact, non-payment of this amount of cash value of concessional food during leave, etc. even if it also may be offending some other law like the Factories Act, etc. relating to leave wages, overtime wages, etc. two wrongs would not make one right in law. In any case, when as per Sec. 6 and its *Explanation-1* Rs. 475-00 per month cash value of concessional food is deemed as dearness allowance. When it is paid during leave or not, it does not authorise the Company to contravene its statutory obligation under Sec. 6 of the Act. He has further submitted that there are several types of dearness allowance in Government and also in private establishment not linked at all with cost of living in case such as fixed dearness allowance, additional dearness allowance, dearness allowance as a part of basic salary, etc. The petitioner-Company had suppressed the fact that in this Company itself there are other types of dearness allowances such as fixed dearness allowance or additional allowance or in any case, when Sec. 6 and its *Explanation-1* treats Rs. 475-00 per month cash value of concessional food

as deemed dearness allowance, the matter stands statutorily concluded that this amount of Rs. 475-00 per month is dearness allowance for the purpose of provident fund contributions under Sec. 6 of the Act. He has, therefore, submitted that the petitioner-Company should be directed to comply with law and the said orders without any further delay and also to pay atleast 12% interest on the delayed contributions from the date of effect of orders of respondent No. 1 as well as the Appellate Tribunal.

**21.** In support of his submissions, Mr. Majmudar relied on the decision of this Court in the case of *Gujarat Cypromet Ltd. v. Assistant Provident Fund Commissioner,* 2004 (3) CLR 485 wherein, it is held that considering the Statement of Objects and Reasons for enactment of the said Act and also as held by the Hon'ble Supreme Court of India in the case of *Regional Provident Fund Commissioner v. Shibu Metal Works,* AIR 1965 SC 1076, there is little scope for doubt that the said Act is a beneficent legislation and the provisions contained therein should be interpreted accordingly. 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 term "basic wages" under Sec. 2(b) of the said Act, unless it falls under all the exception provided therein. Though the definition of basic wages under Sec. 2(b) of the said Act excludes dearness allowance and cash value of any food concession, Sec. 6 requires that contribution shall be made on not only the basic wages, but also dearness allowance, which in turn, shall be deemed to include the cash value of any food concession allowed to the employee. The term "basic wages" is defined as to mean, 'all emoluments which are earned by an employee'. There is no ambiguity whatsoever in the definition of term basic wages. The Court, therefore, held that the respondent No. 1 was perfectly justified in including the benefits received by the employees under the headings of lunch allowance, medical allowance and conveyance allowance and directing the petitioner to pay the provident fund contribution calculated on the said amounts also.

**22.** Mr. Majmudar further relied on the decision of the Apex Court in the case of *Bridge and Roof Company (India) Ltd. v. Union of India,* 1962 (2) LLJ 490 wherein it is held that the basis for exclusion in clause (ii) of the exception in Sec. 2(b) is that all that is not earned in all concerned or by all employees of a 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 Sec. 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 Sec. 6 and the real exception, therefore, in clause (ii) are the other exceptions besides dearness allowance, which has been included through Sec. 6.

**23.** The ratio laid down by the Apex Court in the case of *Bridge and Roof Company* (supra) has been reiterated by the Apex Court in the case of *Manipal Academic of Higher Education v. Provident Fund Commissioner,* AIR 2008 SC 1951 wherein the Court has considered the test of universality. The question before the Apex Court was, whether the amount received on encashment of earned leave was part of basic wage for the purpose of Sec. 2(b) of the Act requiring *pro-rata* employees' contribution. The Court held that the term 'basic wage' includes all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in accordance with the term of contract of employment and can only mean weekly holidays, national holidays, festival holidays, etc. In many cases, the employees do not take leave and encash it at the time of retirement or some encash after his death which can be said to be uncertainties and contingencies. Option is available to employees but some may avail it and some may not avail it. The Court, therefore, held that the test of universality is not satisfied. The Court, therefore, after referring to the decision of *Bridge and Roof Company* (supra), held that basic wage was never intended to include amount received for leave encashment.

**24.** Considering the factual background and the statutory provisions duly interpreted by the Court, Mr. Majmudar has submitted that the cash subsidy given by the petitioner to its employees is exigible to provident fund contribution in view of the provisions contained in Explanation-1 to Sec. 6 of the said Act, and hence, the present petition deserves to be dismissed.

**25.** Mr. Niral Mehta, the learned Advocate appearing for respondent No. 1 has virtually adopted the arguments of Mr. Majmudar and submitted that since there is concurrent finding of fact and law both by the authorities below, this Court should not disturb the impugned orders and the petition be dismissed with cost.

**26.** Having heard the learned Counsels for the parties and having considered the rival submissions in light of the statutory provisions as well as the decided case-law on the subject, the Court has to decide the basic issue raised before it. The issue raised is, whether the canteen subsidy of Rs. 475-00 per month given to the employees of the petitioner pursuant to the settlement dated 9th August, 1995 can be said to be the cash value of any food concession and whether it falls within the *Explanation-1* to Sec. 6 of the said Act, and therefore, it is deemed to be dearness allowance, for which, deduction towards the provident fund contribution should be made.

To appreciate this issue in its proper perspective, it is necessary to have a close look to the statutory provisions contained in Sec. 2(b) as well as *Explanation-1* to Sec. 6 of the said Act. Sec. 2(b) defines 'basic wages' which 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 and conditions of the contract of employment and which are paid or payable in cash to him, but does not include : (1) the cash value of any food concession, (2) any dearness allowance (that is to say, all cash payments by whatever name called, paid to an employee on account of 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 all work done in such employment, and (3) any payments made by the employer." The cash value of any food concession is specifically excluded from the definition of basic wages. Likewise, dearness allowance is also excluded from this definition. Thus, the cash subsidy is not required to be examined with reference to the definition of basic wages. It, however, appears that the legislative intention of excluding the cash value of any food concession and dearness allowance is only because a corresponding provision is made in *Explanation-1* to Sec. 6 of the said Act. Sec. 6 of the said Act deals with contributions and matters which may be provided for in scheme. It talks of the contributions to be made by the employer to the fund on the basic wages, dearness allowance and retaining allowance, if any. *Explanation-1* to Sec. 6 of the said Act creates a deeming fiction. It says that for the purposes of this Section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employees. Thus, the question arose before the Court is whether the canteen subsidy of Rs. 475-00 per month paid by the petitioner to its employees can be said to be the cash value of any food concession and if it is so, it would amount to dearness allowance on which provident fund contributions are required to be made by the petitioner.

**27.** The settlement was arrived at between the petitioner and the representative Union on 9th August, 1995. Clause 17 of the settlement deals with canteen subsidy. It says that the existing rate of canteen subsidy shall be increased from Rs. 300-00 per month to Rs. 475-00 per month effective from 1st July, 1995. Due to the increase in canteen subsidy amount, the rates of eatables made available in canteen facilities will be suitably revised at the respective locations in consultation with the Union. All other terms and conditions for the grant of aforesaid amount remains unchanged. It is the case of the petitioner right from the beginning that the nature of payment of canteen subsidy to its employees is totally different and is not a cash value of any food concession as understood and explained in *Explanation-1* to Sec. 6 of the said Act. It is noticed from the pleadings that the petitioner had earlier

provided canteen subsidy as prescribed under the Factories Act, operative on 'no profit no loss' basis, thereby only those who desire to avail such facilities use to take lunch/snacks during the working hours by exchanging coupons of subsidised value. All the employees were not availing this facility. Employees availing this facility were allowed to consume such eatables at their work place only and such eatables were not allowed to be carried outside. Since, the non-supervisory employees posted outside the complex were not having such subsidised facility, they were paid Rs. 3/- per day in lieu of such subsidised facility. This amount was not in the nature of cash value of any food concession as envisaged in the Act or the scheme framed thereunder. Initially, all employees posted outside the plant premises, where subsidised canteen facilities were not available were given cash canteen subsidy in lieu of subsidised canteen facility. However, employees posted inside the plant premises, where subsidised canteen facilities were available were given an option to either avail the canteen facility or draw canteen subsidy. There were still few employees who were not drawing canteen subsidy, but were availing subsidized canteen facility. This would show that the payment of such subsidy could not be generalized and treated as cash value of food concession, forming part of wages as envisaged under the Act. It has also been noticed from the pleadings that canteen subsidy has been linked to actual presence and proportionate deductions were made in case an employee remains absent from work for more than a specified period because the nature of canteen subsidy is not for neutralizing the effect of increase in the cost of living index but is purely in the nature of reimbursement of part of expenses incurred while at work for food and tea/ coffee during working hours. The payment of canteen subsidy remain constant and would not vary (either increase or decrease) along with the change in the cost of living index. Thus, while excluding any dearness allowance or any such cash payment from the purview of basic wages, the Legislature has made it very clear that it must be on account of a rise in the cost of living. If it is not linked up with any increase in the cost of living index, it cannot be said to be a cash value of any food concession and hence it cannot be included in dearness allowance. Another issue which is made very clear by the decision of the Apex Court in *Manipal Academy of Higher Education* (supra) is that the test of universality must also be satisfied. The cash value of food concession would fall within its ambit only if food items given by some employers are part of wages, when wages are paid partly in cash and partly in kind. Only in such cases, cash value of any food concession can form part of wages as envisaged in the Act or the scheme. Canteen subsidy in the petitioner's case is not an item of that nature.

**28.** The Regional Provident Fund Commissioner, while passing the impugned order under Sec. 7A of the said Act, has examined as to what

is the cash value of food concession, and having come to the conclusion that it is not reaching certain employees in cash form, then it cannot be termed as 'dearness allowance'. Had it been so, then it would not have been mentioned separately under Sec. 2(b)(i). The cash value of food concession, therefore, cannot form part of Sec. 6 of the said Act for the purpose of contribution inasmuch as the cash value of food concession has already been excluded from the basic wages. So far as the dearness allowance as mentioned in Sec. 2(b)(ii) is concerned, there are also certain allowances which have been excluded from the ambit of basic wages, but so far as Sec. 6 is concerned only the basic wages, dearness allowance and retaining allowance, if any, for the time-being payable to each of the employees, have to be taken into account for the purpose of contribution. So far as the present case is concerned, canteen subsidy cannot form part of dearness allowance as all the employees are not in receipt of subsidy, besides it is neither linked with the consumer index nor to neutralize the rise in prices. Thus, the same cannot be included for the purpose of contribution. As referred to earlier, in the decision of the Apex Court in the case of *Bridge and Roof Company (India) Ltd.* (supra), it has been clearly held that whatever is not payable by all concerned or may not be earned by all employees of a concern, is excluded for the purpose of contribution.

**29.** There is no dispute about the fact that the employees of all concerned are paid industrial dearness allowance which undergoes change on quarterly basis depending upon the rise/fall in All India Consumer Price Index (Shimla series). Compared to this, the payment of canteen subsidy is not at all increasing or decreasing either on quarterly basis or yearly basis, and therefore, it cannot be linked with dearness allowance. The canteen subsidy is basically provided to the employees to help them in getting the food of their choice either from their own home or by purchasing the same from the canteen wherever available on limited basis. In fact, this canteen subsidy is being paid because it has not been able to provide the canteen subsidy at all the locations and it is only on account of that, that the canteen subsidy has been introduced by the petitioner. It, therefore, cannot be treated as a substitute or a part of dearness allowance in any form.

**30.** The Bombay High Court judgment in the case of *Tata Power Company Ltd.* (supra) precisely on the same issue. The Court, first examined the contentions raised by the Provident Fund Department and observed that if any concession is capable of being computed in cash, such value must be included as dearness allowance. Any amount paid for food is a food concession. Even if an employer does not provide any food at all, the amount paid by the employer for purchasing such food must be treated as the cash value of any food concession. While distinguishing this argument of the Regional Provident

Fund Commissioner, the Court observed that the term must be interpreted as a whole having regard to the object of the Legislation. In the first place, the term refers to cash value of any food concession allowed to the employee *i.e.* the value of concession in regard to food, that is the value by which the price of food is reduced. This presupposes that food is provided to the employees as part of terms and conditions of employment, as appears to be the practice in some employment. It is only when food is supplied at a concession that the cash value of the concession can be computed. The Court also refers to the dictionary meaning of the word '*concession*'; as per *Concise Oxford Dictionary, 'concession*' means '1(a) the act or an instance of conceding something asked or required (made the concession that we were right) (b) a thing conceded. 2(a) reduction in price for a certain category of person. 3(a) the right to use land or other property, granted esp. by a Government or local authority, esp. for a specific use. (b) the right, given by a company, to sell goods, esp. in a particular territory. (c) the land or property used or given concessional.' The Court took the view that the word 'concession' used in the present context is reduction in price. Accordingly, a food concession is the value to be construed as offering food at a concession and the cash value of a food concession is liable to be construed as the value by which the price of food is reduced. The Court has also derived support from similar term used in Sec. 4(1)(ii) of the Minimum Wages Act, 1948, which says that any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under Sec. 3 may consist of a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised. The Court drew a distinction between the cash value and the concessions in respect of supply of essential commodities and merely the phrase the cash value of any food concession. It is ultimately held that the term cash value of any food concession allowed to the employees means such value of the component by which the price of the item is reduced and there being no supply of any food by the petitioner, the payment of food allowance cannot be treated as the cash value of food concession allowed to the employees. This decision squarely applies to the facts of the present case. The canteen subsidy paid by the petitioner to its employees goes to reduce the price of food and no supply of food is made by the petitioner, and hence, it cannot be treated as the cash value of food concession allowed to the employees.

**31.** A very heavy reliance was placed by Mr. Majmudar 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-1* to Sec. 6 of the said Act.

**32.** In view of the foregoing discussion, the issue raised before the Court is decided in favour of the petitioner by holding that the canteen subsidy of Rs. 475-00 per month given to the employees of the petitioner pursuant to the settlement dated 9th August, 1995 cannot be said to be the cash value of any food concession and it does not fall within the ambit of *Explanation-1* to Sec. 6 of the said Act and hence it cannot be deemed to be dearness allowance and not liable to deduction towards provident fund contribution.

**33.** The petition is accordingly allowed. The impugned orders passed by the respondent No. 1 and the Appellate Tribunal are hereby quashed and set aside. Rule is made absolute without any order as to cost.

*(HSS)* *Petition allowed.*

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## SUPREME COURT

*Present : Mr. Markandey Katju & Ms. Gyan Sudha Misra, JJ.*

ARUP BHUYAN v. STATE OF ASSAM*

**(A) Evidence Act, 1872 (1 of 1872) — Sec. 25 — Confession by accused — Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987) — Sec. 15 — Confession by T.A.D.A. accused before Superintendent of Police — In the absence of corroborative material, conviction cannot be based solely on such confession.**

**(એ) પુરાવા અધિનિયમ, ૧૮૭૨ — કલમ ૨૫ — આરોપી દ્વારા કબુલાત — આતંકવાદી અને ભાંગફોડિયા પ્રવૃત્તિઓ (અટકાયત) અધિનિયમ, ૧૯૮૭ — કલમ ૧૫ — સુપરિન્ટેન્ડન્ટ ઑફ પોલીસ સમક્ષ ટાડાના આરોપીની કબુલાત — પુષ્ટિકારક સામગ્રીના અભાવે માત્ર આવી કબુલાત ઉપર સજા આધારિત ન થઈ શકે.**

The Courts have to be cautious in accepting confessions made to the police by the alleged accused. (Para 6)

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*Decided on 3-2-2011. Criminal Appeal No. 889 of 2007 against the judgment and order passed by the Designated Court, Guwahati, Assam dated 28-3-2007 in T.A.D.A. Sessions Case No. 13 of 1991.