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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21.05.2026
Date of decision: 14.08.2026
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\# **CNR No : DLHC011190812017**

\+ W.P.(C) 2547/2017

CENTRAL BOARD OF TRUSTEE ....Petitioner

Through: Mr. Rony John and Mr. Arshdeep Singh, Advs.

versus

M/S CELEBI GROUND HANDLING DELHI (P) LTD .....Respondent

Through: Mr. Rajesh Kumar, and Mr. Mordhwaj, Advs.

CORAM:
HON'BLE MS. JUSTICE SHAIL JAIN

JUDGMENT

SHAIL JAIN, J.

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India by the Petitioner/Central Board of Trustees, Employees' Provident Fund Organisation, assailing the order dated 09.02.2017 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi (hereinafter, *'the learned Tribunal'*) in ATA No. 987(4) of 2015, whereby the Tribunal allowed the appeal preferred by the Respondent/Establishment and set aside the order dated 26.06.2015 passed by the Regional Provident Fund Commissioner-II, Delhi (South) under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act,

1952 (hereinafter, '*the Act'*), determining provident fund dues against the Respondent/Establishment.

BRIEF FACTS OF THE CASE:

2. Brief facts emerging from the record, necessary for adjudication of the present writ petition, are that the Respondent/Establishment, M/s Celebi Ground Handling Delhi Pvt. Ltd. (hereinafter, '*the Establishment*'), is engaged in the business of providing ground handling and related manpower services, including technical as well as manual services. The Establishment came within the purview of the Act with effect from 18.11.2009 and was accordingly required to comply with the statutory provisions relating to provident fund contributions in respect of its employees.

3. During the course of an electronic audit of the compliance status of the Establishment, the Provident Fund authorities noticed that a number of employees had been reported as drawing wages below Rs.2,500/- and provident fund contributions were being remitted on such amounts. Consequently, a notice dated 02.01.2015 was issued to the Establishment calling upon it to furnish the requisite explanation and records. Proceedings under Section 7A of the Act were thereafter initiated for determination of the amount, if any, due from the Establishment.

4. During the course of the proceedings under Section 7A of the Act, the authorised representative of the Establishment appeared before the competent authority and produced various documents and records, including annual returns, details of employees, challans, balance sheets, appointment/offer letters, as well as other documents relating to the Establishment's operations and expenditure. The Establishment also furnished its salary records and the

corresponding break-up of remuneration paid to its employees. The records reflected various components of remuneration, including basic salary and different allowances and other payments. The competent authority examined the said material for the purpose of determining the wages on which provident fund contributions were payable under the Act.

5. The Departmental Representative, upon examination of the records produced by the Establishment, submitted a report dated 30.04.2015. In respect of the employees forming part of the regular salary structure, the report noted that the remuneration had been divided into various components and that the basic salary constituted a comparatively smaller component of the total earnings in a number of cases. The report recorded that, during the period from April 2010 to January 2015, the differential wages on which provident fund contribution was considered payable in respect of such employees were quantified at Rs.2,66,59,145/-.

6. The Departmental Representative also examined the salary structure of expatriate employees. It was noted in the report that their remuneration was likewise divided into various components and that provident fund contributions had been made on the basic salary component. On the basis of the records examined, the additional wages considered liable for provident fund contribution in respect of expatriate employees were quantified at Rs.2,58,41,993/-.

7. A separate component of the assessment related to amounts reflected in the Establishment's records towards reimbursement of salaries of drivers. The Departmental Representative noticed that, for the period from April 2011 to January 2015, an amount of Rs.17,44,000/- had been booked towards salaries of drivers, on which provident fund contributions had not been made.

The said amount was accordingly considered for the purpose of determination of provident fund dues.

8. The report was furnished to the Establishment, which submitted its response thereto. The Establishment disputed, *inter alia*, the treatment of the various components of its employees' remuneration, the assessment relating to expatriate employees and the inclusion of the amounts reimbursed towards drivers' salaries. Its case was that the drivers in question had been engaged by individual employees for their personal use and were neither appointed nor employed by the Establishment. It was thus contended that the said drivers did not fall within the definition of "*employee*" under Section 2(f) of the Act and that the reimbursement of the amounts paid by individual employees to such drivers could not form part of the wages liable for provident fund contribution.

9. The competent authority thereafter considered the material placed on record, including the documents produced by the Establishment, the report of the Departmental Representative and the response submitted by the Establishment. Upon such consideration, the Regional Provident Fund Commissioner-II passed an order dated 26.06.2015 under Section 7A of the Act, determining a sum of Rs.1,38,92,200/- as provident fund dues payable by the Establishment.

10. Aggrieved by the aforesaid order dated 26.06.2015, the Establishment preferred an appeal under Section 7-I of the Act before the learned Tribunal, which was registered as ATA No. 987(4) of 2015. During the pendency of the appeal, the learned Tribunal passed an order dated 31.08.2015 directing the Establishment to deposit 50% of the assessed amount in terms of Section 7-O of the Act.

11. The Establishment thereafter challenged the aforesaid order of pre-deposit before this Court by way of W.P.(C) No. 8752/2015. The said writ petition was dismissed by this Court *vide* order dated 11.09.2015. The Establishment preferred LPA No. 787/2015 against the said order, which also came to be dismissed by the Division Bench of this Court *vide* order dated 04.11.2015.

12. The learned Tribunal thereafter proceeded to adjudicate the appeal on merits. The Establishment contested the determination made under Section 7A of the Act in respect of the various components of salary considered for the purpose of provident fund contribution, as also the amount taken into consideration towards reimbursement of drivers' salaries. The Petitioner/Provident Fund authorities opposed the appeal and supported the order passed by the competent authority under Section 7A of the Act.

13. Upon consideration of the pleadings, documents and material placed before it, the learned Tribunal, *vide* the impugned order dated 09.02.2017, allowed the appeal preferred by the Establishment and set aside the order dated 26.06.2015 passed under Section 7A of the Act. The learned Tribunal, *inter alia*, held that the Provident Fund authorities could not determine provident fund liability merely by proceeding on the basis of minimum wages and that the allowances forming part of the salary structure could not be included in basic wages in the manner adopted in the assessment without examining their individual nature and applicability. The learned Tribunal also examined the assessment relating to drivers' salaries and found the said assessment unsustainable in the absence of identification of the concerned drivers and the relevant particulars of their alleged employment.

14. The learned Tribunal consequently directed refund of the amount

deposited/recovered pursuant to the order dated 26.06.2015, in accordance with the terms contained in the impugned order.

15. Aggrieved by the aforesaid order dated 09.02.2017 passed by the learned Tribunal in ATA No. 987(4) of 2015, the Petitioner/Central Board of Trustees, Employees' Provident Fund Organisation has preferred the present writ petition.

SUBMISSIONS OF THE PARTIES:

16. Learned counsel appearing on behalf of the Petitioner submitted, at the outset, that the Petitioner does not press for a final adjudication of the merits of the assessment by this Court, and that the appropriate course would be to set aside the impugned order and remand the matter to the learned Tribunal for a fresh decision in accordance with law. It was submitted that the learned Tribunal has not decided the appeal in the manner required of an appellate authority under the Act, inasmuch as it has not undertaken any examination of the material on record and has not recorded any finding of fact upon the questions that arose for its determination.

17. It was contended that the central question before the learned Tribunal was whether the several components into which the remuneration of the employees of the Establishment had been divided constituted "*basic wages*" within the meaning of Section 2(b) of the Act. Learned counsel submitted that the determination of that question necessarily required the learned Tribunal to examine the wage structure of the Establishment, to identify the individual components thereof, and to record findings as to the nature and character of each such component. It was submitted that the impugned order contains no such examination and no such finding. The learned Tribunal has neither

adverted to the salary records and offer letters placed before it, nor identified any of the components in question, nor recorded any finding as to whether such components were or were not paid to the employees uniformly.

18. Learned counsel further submitted that the material on record demonstrates that the basic wages of the employees of the Establishment constituted a comparatively small fraction of the total remuneration paid to them, the balance being distributed across a number of separately described heads. It was submitted that this feature of the wage structure called for scrutiny by the learned Tribunal and that the impugned order proceeds without any consideration of it.

19. It was next submitted that the learned Tribunal has proceeded upon a misapprehension as to the basis of the assessment. Learned counsel submitted that the competent authority did not, at any stage, seek to determine provident fund liability by reference to the rates notified under the Minimum Wages Act, 1948, and did not direct the Establishment to pay wages at any particular rate. What the competent authority applied was the statutory wage ceiling of Rs. 6,500/- per month prescribed under the Act and the Scheme framed thereunder, and it applied that ceiling as a limit upon the assessment. Learned counsel emphasised that the ceiling operated in favour of the Establishment, since the differential wages were computed only up to Rs.6,500/- per month and not upon the whole of the remuneration actually paid. It was therefore submitted that the finding of the learned Tribunal, that the Provident Fund authorities were seeking to enforce the Minimum Wages Act, proceeds upon a misreading of the order under Section 7A of the Act.

20. Learned counsel submitted that while an establishment cannot be compelled to fix basic wages at any particular figure, and while the statute

itself limits the assessable wage to the prescribed ceiling, it is equally not open to an establishment to distribute remuneration across artificially created heads with the object of maintaining the basic wage below the ceiling and thereby avoiding the contribution otherwise payable upon the ceiling amount. It was submitted that whether the heads in question were artificially created or genuinely referable to distinct entitlements is a question of fact, and that it is precisely this question that the learned Tribunal has left undetermined.

21. In support of the above submissions, and as elaborated in the written submissions filed on behalf of the Petitioner, it was contended that Section 2(b) of the Act defines "basic wages" to mean all emoluments earned by an employee, subject only to the exclusions specifically enumerated therein, and that an emolument which does not fall within any of the enumerated exclusions forms part of basic wages. Reliance was placed upon ***Bridge and Roof Co. (India) Ltd. v. Union of India***, (1963) 3 SCR 978, and ***Manipal Academy of Higher Education v. Provident Fund Commissioner,*** (2008) 5 SCC 428, for the proposition that emoluments which are universally, necessarily and ordinarily paid to all employees across the board partake of the character of basic wages, whereas payments which are variable, or referable to extra output, or available only to those who avail of a particular opportunity, do not. Reliance was also placed upon the decision of the Hon'ble Supreme Court in ***Regional Provident Fund Commissioner (II), West Bengal v. Vivekananda Vidyamandir***, (2020) 17 SCC 643, rendered subsequent to the impugned order, wherein the aforesaid test was reiterated and it was held that the burden lies upon the establishment to establish that a particular allowance falls outside the ambit of basic wages.

22. Learned counsel further submitted, with reference to the component of

the assessment relating to reimbursement of drivers' salaries, that the said amounts stood recorded in the Establishment's own audited accounts, that the definition of "employee" under Section 2(f) of the Act is wide enough to take in a person employed in or in connection with the work of an establishment who receives wages directly or indirectly from the employer, and that the inability of the department to name the individual drivers cannot furnish a ground for setting aside the assessment, the relevant records being in the exclusive possession of the Establishment.

23. *Per contra*, Learned counsel appearing on behalf of the Respondent/Establishment submitted that although the Establishment had been brought within the coverage of the Act with effect from 18.11.2009, it had in fact commenced its commercial operations only in the year 2010. It was submitted that the Establishment was not operational during the intervening period, and that the Provident Fund authorities had nevertheless initiated and extended the proceedings under Section 7A of the Act from the date of coverage.

24. Learned counsel further submitted that the allegation upon which the enquiry was founded, namely that the Establishment was paying basic wages of less than Rs.2,500/- per month, was factually incorrect. It was submitted that the basic wages of the employees of the Establishment were, on an average, about Rs. 3,450/- per month, and that a substantial number of employees were in receipt of basic wages in excess of Rs.6,500/- per month. It was submitted that the Establishment had at all times been regularly furnishing particulars of its employees and their wages to the Provident Fund authorities, and that there was no material to support the allegation that employees were being shown as drawing basic wages below Rs.2,500/- per

month.

25. It was contended that the several components of remuneration paid over and above the basic wages were paid in accordance with the terms of employment agreed between the Establishment and its employees, and were referable to the nature of the work performed, the performance of the individual employee and the conditions in which he was required to work. It was submitted that such payments cannot, merely by reason of their forming part of the overall salary package, be treated automatically as basic wages, and that the character of each such payment must be determined with reference to the terms upon which it is paid.

DISCUSSION:

26. This court has heard learned counsel for the parties at length and have carefully perused the record, including the order dated 26.06.2015 passed under Section 7A of the Act, the impugned order of the learned Tribunal and other documents placed on record.

27. Before examining the rival contentions, it would be appropriate to notice the statutory framework. Section 2(b) of the Act defines "*basic wages*" to mean all emoluments which are earned by an employee while on duty or on leave or on holiday with wages, in accordance with the terms of the contract of employment and which are paid or payable in cash, subject to the exclusions specifically enumerated therein. Section 6 of the Act provides for the contributions payable by the employer and employee with reference to basic wages, dearness allowance and retaining allowance, if any. The character of a payment, therefore, has to be determined with reference to the statutory definition and the conditions governing its payment, and not merely

by the nomenclature assigned to it by the employer.

28. The principles governing the determination of "basic wages" are no longer *res integra*. In ***Manipal Academy of Higher Education v. Provident Fund Commissioner*, (2008) 5 SCC 428**, upon a consideration of Sections 2(b) and 6 of the Act, reiterated the principles enunciated in ***Bridge and Roofs Co. Ltd. v. Union of India***, (1963) 3 SCR 978, and held that where an emolument is **universally, necessarily and ordinarily paid to all employees across the board**, it would constitute basic wages. Conversely, a payment which is specially available only to those employees who avail of a particular opportunity, or which is paid by way of a special incentive or for additional work, would not form part of basic wages. The test, therefore, is not merely the description or nomenclature assigned to a particular component of remuneration, but the nature and character of the payment and the circumstances in which it becomes payable.

29. The aforesaid principles were authoritatively reiterated by the Hon'ble Supreme Court in ***Regional Provident Fund Commissioner (II), West Bengal v. Vivekananda Vidyamandir***, (2020) 17 SCC 643. After examining the statutory scheme and the earlier decisions, the Apex Court observed that **"the crucial test is one of universality"**. It reiterated that emoluments which are universally, necessarily and ordinarily paid to all employees across the board constitute basic wages, whereas payments which are variable, linked to an incentive for production resulting in greater output, or are available particularly to employees who avail of a particular opportunity, stand on a different footing. The Court further recognised that the mere fact that a payment forms part of the salary structure does not, by itself, determine its character, what is required to be examined is whether the payment is part of

the normal remuneration payable under the terms of employment or whether it is attributable to some special circumstance, additional work, increased output or an opportunity availed of by the employee.

30. It is, therefore, clear that the question whether a particular component of remuneration constitutes basic wages cannot be answered merely by looking at the nomenclature assigned to it. Equally, the mere fact that the basic component constitutes a relatively small proportion of the gross remuneration cannot, by itself, establish that the balance necessarily forms part of basic wages. The relevant enquiry is whether the particular payment is universally, necessarily and ordinarily payable, or whether its payment is dependent upon a contingency, additional work, performance, output or some other condition.

31. It is against this settled background that the impugned order of the learned Tribunal is required to be examined. The learned Tribunal, in paragraph 7 of its order, framed the question before it in the following terms:

> *"...So now this is to be seen by this Tribunal whether respondent is empowered to direct the appellant establishment to pay minimum wages to the employees. During course of argument, no provision of the Act cited by counsel for respondent which could reveals that 'Commissioner' is empowered to direct the employer to pay minimum wages to the employee."*

32. Having so framed the question, the learned Tribunal answered it in paragraph 8 in these terms:

> "*Bifurcation of wages below minimum wages or basic wages and DA etc. are the issues, completely out of the purview of PF authorities. PF authorities has no jurisdiction to ensure the compliance of Minimum Wages Act or to issue any direction in this regard.*

Wages are to be determined is a decision between employee and employer and further authority appointed under the Minimum Wages Act is only empowered to raise issue regarding Minimum Wages, to be given to the employee."

33. There can be no dispute with the general proposition that the authorities functioning under the Act do not exercise jurisdiction under the Minimum Wages Act, 1948 and cannot, in proceedings under Section 7A of the Act, direct an employer to pay wages at rates prescribed under the Minimum Wages Act. However, the difficulty with the impugned order is that the learned Tribunal proceeded to determine the appeal substantially on that premise without first examining whether the order dated 26.06.2015 was, in fact, founded upon the rates prescribed under the Minimum Wages Act.

34. A perusal of the order dated 26.06.2015 shows that the competent authority had examined the wage structure of the Establishment and, while computing the differential wages, had taken into account the statutory ceiling of Rs. 6,500/- per month. Paragraph 16 of the said order records:

"...while calculating the difference of dues cap of Rs.6500/- pm has been considered in respect of these employees and difference of wages on which PF is liable to be deducted is worked out as Rs. 2,66,59,145/- from the month of 04/2010 to 01/2015."

35. The ceiling of Rs. 6,500/- per month is a creature of the Act and the Scheme framed thereunder and cannot, therefore, be equated with the minimum wages prescribed under the Minimum Wages Act. The two operate in distinct fields. The ceiling was relevant to the extent of provident fund contribution under the statutory scheme and did not, by itself, constitute a direction to the Establishment to pay wages at any particular rate. To this

extent, the learned Tribunal proceeded on an erroneous understanding of the basis of the assessment.

36. More importantly, however, the real controversy before the learned Tribunal was not whether the Provident Fund authorities could enforce minimum wages. The controversy was whether the different components into which the remuneration of the employees had been divided were, in substance, part of "*basic wages*" within the meaning of Section 2(b) of the Act.

37. This aspect assumes significance because the record itself discloses that the Petitioner had specifically alleged before the learned Tribunal that the Establishment had resorted to an artificial bifurcation of wages by describing different components under separate heads so as to reduce its statutory provident fund liability. The learned Tribunal itself recorded the said contention in paragraph 4 of the impugned order:

> *"Per contra Ld. Counsel for respondent contended that there is illegal, arbitrary and discriminate splitting of wages in the appellant establishment with the intention to reduce the statutory liability of the employer under the Act and several allowances were not included in the basic wages, which suggest that appellant was restoring to subterfuge by showing different allowances under various hypothetical names to reduce the PF liability."*

38. Thus, the allegation of artificial splitting or subterfuge was not an issue introduced for the first time before this Court. It was specifically raised before the learned Tribunal and was noticed by it. Once such an issue arose, the learned Tribunal was required to examine the salary structure and the material produced by the parties and determine whether the components excluded from basic wages were genuinely referable to distinct entitlements or were, in

substance, universally, necessarily and ordinarily payable remuneration.

39. What follows in paragraph 9 of the impugned order illustrates the difficulty in acute form. The learned Tribunal there held:

> *"...allowances cannot be included in the Basic Wages especially when not given to the all employees universally and PF authorities are having no right to issue any direction and order against employer asking to pay PF contributions according to Minimum Wage Act."*

40. The words "*especially when not given to the all employees universally*" state, in substance, the very test laid down in *Bridge and Roof (supra)* and reaffirmed in *Manipal Academy (supra)*. The learned Tribunal thus correctly identified the applicable criterion. It did not, however, undertake that exercise. The impugned order does not identify the individual components of remuneration, does not examine the conditions governing their payment and does not record any finding as to whether the disputed allowances were in fact paid universally, necessarily and ordinarily to the employees concerned. A conclusion that allowances are not to be included because they are not universally paid, unaccompanied by any finding that they were in fact not universally paid, is a conclusion resting upon an assumption rather than upon evidence.

41. The distinction is material. The settled law does not permit either the Establishment or the Provident Fund authorities to determine the question merely by reference to nomenclature. The question is one of fact to be determined by applying the settled legal test. Thus, if the Establishment contends that "Special Allowance", "Skill Allowance", "Uniform Allowance" or any other component is outside basic wages, the factual basis for such

exclusion has to be examined. Likewise, if the Provident Fund authorities contend that a particular allowance is merely a nomenclature for an otherwise ordinary component of remuneration, that contention has to be tested against the actual wage records.

42. The record requisitioned by this Court contains substantial material in the form of CTC break-up details of individual employees, besides other financial and wage records. The very existence of such material reinforces the conclusion that the issue was capable of factual examination. Yet the impugned order contains no employee-wise or component-wise analysis and does not disclose any application of the universality test to the material produced before the learned Tribunal.

43. The example of Mr. Uday Pratap Singh referred to during the course of hearing, illustrates why such an exercise was necessary. His salary structure is stated to comprise basic wages of Rs. 5,850/-, Special Allowance of Rs.6,123/-, Skill Allowance of Rs.250/- and Uniform Washing Allowance of Rs.800/-, besides other components. The fact that the basic component is substantially lower than the aggregate remuneration may invite scrutiny, but it does not by itself establish that the Special Allowance or the other components constitute basic wages. Conversely, the mere description of those amounts as allowances does not conclude the issue in favour of the Establishment. The relevant question is whether those payments were universally, necessarily and ordinarily made and what conditions, if any, governed their payment.

44. The learned Tribunal's failure to undertake this exercise is therefore not a mere deficiency in the articulation of reasons. The Tribunal, being the statutory appellate authority, was required to determine the controversy which

arose from the order under Section 7A. Having itself noticed the allegation of artificial splitting, it could not dispose of the appeal merely by observing that the Provident Fund authorities had no jurisdiction to enforce minimum wages, without determining whether the disputed components were basic wages under Section 2(b) of the Act.

45. There is an additional and independent infirmity in the impugned order insofar as the assessment relating to expatriate employees is concerned. The order dated 26.06.2015 contains a separate component of assessment in respect of expatriate employees. The Establishment had raised objections concerning the number of expatriate employees taken into account and the basis upon which their wages had been computed. The learned Tribunal, however, does not record any finding dealing with the said assessment or the objections raised in respect thereof. The impugned order, while setting aside the order dated 26.06.2015 in its entirety, does not disclose any adjudication of this distinct component of the assessment.

46. An appellate authority is required to deal with the material issues which arise for its consideration and to record reasons which disclose application of mind to those issues. It cannot set aside a composite determination without examining the individual heads which form its basis. The failure of the learned Tribunal to record any finding on the expatriate component is, therefore, a further reason why the impugned order cannot be sustained.

47. The same principle applies, though in a somewhat different factual context, to the assessment relating to drivers' salaries. The competent authority had noticed amounts reflected in the Establishment's own records towards reimbursement of drivers' salaries. The Establishment disputed that the drivers were its employees and contended that they had been engaged by

individual employees for their personal requirements. Section 2(f) of the Act defines "employee" in wide terms and includes a person employed for wages in or in connection with the work of an establishment and receiving wages directly or indirectly from the employer. The issue, therefore, required determination on the basis of the factual material available.

48. The learned Tribunal, however, set aside the assessment on the ground that the drivers were not identifiable and that their wages and period of employment were not known. Whether that conclusion is ultimately correct on the material available is not a question which this Court proposes to determine at this stage. What is material is that the statutory authority had relied upon entries in the Establishment's own books and had sought to bring the payments within the statutory definition. The appellate authority ought to have examined the factual basis of that determination and the material relied upon by both sides before affirming or setting it aside.

49. The jurisdiction exercised by this Court under Articles 226 and 227 of the Constitution is supervisory. It is not the function of this Court to undertake, in the first instance, an employee-wise examination of voluminous salary records and determine whether individual allowances are universally, necessarily and ordinarily payable. At the same time, the supervisory jurisdiction is available where a statutory authority fails to adjudicate the material issue arising before it, proceeds on an erroneous legal premise, or fails to consider material evidence bearing directly upon the determination. The Hon'ble Supreme Court in ***Syed Yakoob v. K.S. Radhakrishnan***, AIR 1964 SC 477, has explained the limited but real scope of certiorari jurisdiction where an inferior tribunal acts without jurisdiction, exceeds its jurisdiction or commits an error apparent on the face of the record. The supervisory

jurisdiction is not an appellate jurisdiction, but it can certainly be exercised to correct a failure to exercise jurisdiction vested in the statutory authority.

50. The present case falls within that limited category. This Court is not substituting its own assessment of the salary structure for that of the learned Tribunal. Rather, the Court finds that the learned Tribunal did not undertake the adjudicatory exercise which the controversy required. It proceeded principally upon the premise that the Provident Fund authorities were attempting to enforce minimum wages, whereas the material before it called for determination of the character of the various components of remuneration under Section 2(b) of the Act. The Tribunal also failed to return findings on the distinct assessment relating to expatriate employees.

51. The appropriate course, therefore, is not for this Court to affirm the assessment made under Section 7A of the Act or to itself determine which of the individual allowances constitute basic wages. Nor would it be appropriate to finally determine the drivers' or expatriate employees' components without the statutory appellate authority first examining the material. The appropriate course is to remand the matter to the learned Tribunal for fresh adjudication.

52. Upon remand, the learned Tribunal shall examine the controversy afresh in accordance with law and shall, in particular, apply the principles in the judgments discussed hereinabove, including *Bridge & Roof Co. (India) Ltd. v. Union of India*, *Manipal Academy of Higher Education v. Provident Fund Commissioner* and *Regional Provident Fund Commissioner (II), West Bengal v. Vivekananda Vidyamandir*. The Tribunal shall examine the individual components of remuneration and determine, on the basis of the material already on record and such further material as may be lawfully placed before it, whether the respective payments were universally, necessarily and

ordinarily paid to the employees concerned, or whether they were variable, contingent, incentive-linked, or otherwise fall within the statutory exclusions under Section 2(b) of the Act.

53. The learned Tribunal shall also separately consider the assessment relating to expatriate employees, including the objections raised by the Establishment regarding the number of employees taken into account and the basis of computation, and shall record a reasoned finding thereon. Likewise, the assessment relating to drivers' salaries shall be examined with reference to the material relied upon by the competent authority and the Establishment's contention regarding the absence of an employer-employee relationship, keeping in view the definition contained in Section 2(f) of the Act.

54. It is clarified that this Court has expressed no opinion on the merits of the individual components of remuneration or on the ultimate liability of the Establishment. Nothing contained in this judgment shall be construed as a finding that any particular allowance constitutes, or does not constitute, basic wages. The learned Tribunal shall decide the matter independently, uninfluenced by any observation herein except insofar as the legal principles governing the exercise are concerned.

55. In view of the foregoing discussion, the **impugned order** dated 09.02.2017 passed by the learned Employees' Provident Fund Appellate Tribunal, New Delhi in ATA No.987(4) of 2015 is **set aside**. **The matter is remanded to the learned Tribunal for fresh adjudication in accordance with law and in the light of the observations contained herein.**

56. The learned Tribunal shall endeavour to decide the appeal expeditiously, preferably within a period of six months from the date of receipt of a copy of this judgment.

57. The writ petition is accordingly allowed in the above terms. Pending applications, if any, stand disposed of.

SHAIL JAIN
JUDGE

AUGUST 14, 2026/*dg*