



1. The Courts time and again have been confronted with the litigation relating to the interpretation of the expression “the cash value of any food concession” as used in section 2(b)(i) and Explanation 1 to Section 6 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the “EPF Act, 1952”). The present appeal stems out from such issue.

2. The present appeal filed under Clause 15 of the Letters Patent, 1865, is directed against the judgment and order dated 10.01.2011 passed by the learned Single Judge allowing the writ petition filed by the respondent – Reliance Industries Ltd., (hereinafter referred to as the “the Industries”) assailing the order dated 20.01.2000 passed by the Appellate Tribunal, New Delhi, dismissing the appeal of the respondent – Industries, while confirming the orders dated 25.06.1998 passed by the Regional Provident Fund Commissioner, Vadodara under Section 7A of the EPF Act, 1952 and the order dated 01.06.1999 passed by the respondent – Regional Provident Fund Commissioner

BRIEF FACTS :-

3. The dispute between the appellant – IPCL Employees Association and the Industries pertain to “the Canteen Subsidy”, which is being paid at the rate of Rs.475/- per month to the members of the appellant-Association. The entire case of both the parties’ hinges on the provisions of Section 2(b) and Explanation-1 to Section 6 of the EPF Act, 1952.



4. A settlement dated 09.08.1995 under Section 12(3) and Section 18(3) of the Industrial Disputes Act, 1947 (the I.D. Act) was arrived at between the Association and the respondent- Industries, which contained clause 17, increasing the canteen subsidy from Rs.300/- to Rs.475/-. The said settlement does not contain any explanation as to whether the canteen subsidy will form part of basic wages or dearness allowance.

5. Ultimately, the dispute landed before the EPF authorities and after hearing both the parties, the respondent - Regional Provident Fund Commissioner passed an order on 25.06.1998 concluding that the "Cash Canteen Subsidy", is in the form of "dearness allowance" and would attract the contribution under the EPF Act, and hence, the Industries are liable to contribute such amount. Such order is passed in the proceedings under Section 7-A of the EPF Act, 1952 by the employees' Association. Thus, it is held by the respondent - Regional Provident Fund Commissioner that the "Cash Canteen Subsidy" being in the form of dearness allowance would attract the provident fund and the Industries are liable to pay the provident fund on canteen subsidy since June, 1996. The contention of the Association to treat the cash canteen subsidy as part of basic wages has been rejected.

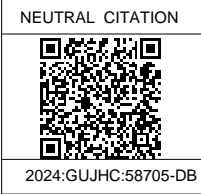
6. The Industries, thereafter, moved an application seeking review of the said order under Section 7-B (1) of the EPF Act, 1952. The contention was raised by the Industries in the review application was that the canteen subsidy, which is paid to the appellant - employees does not fall within the definition of "basic wages", as defined under Section 2(b) of the said Act,



and therefore, it cannot form part of dearness allowance, as envisaged under Section 6 of the EPF Act, 1952. The review application was rejected vide order dated 01.06.1999. The respondent - Industries assailed the said orders under Section 7-A of the EPF Act, 1952 by filing an appeal under Section 7-I of the EPF Act, 1952 before the Appellate Tribunal, New Delhi. After hearing both the parties, the Appellate Tribunal, New Delhi vide its order dated 20.01.2000 dismissed the appeal and confirmed the orders dated 25.06.1998 and 01.06.1999 passed by the respondent No.1, however modified the order passed under section 7-A to the extent that the Industries shall pay the contribution on cash value of food concession from the date of order of 7-A or from the date when employees' share was deducted or whichever is earlier. These orders were subject matter of challenge before the learned Single Judge. The learned Single Judge has set aside all the orders and hence, the same has given cause to file the present Letters Patent Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT-ASSOCIATION :-

7. At the outset, learned Senior Advocate Mr. Shalin Mehta, appearing for the appellant - Association has submitted that the learned Single Judge has erred in setting aside the concurrent orders passed by the authorities below, while exercising the powers under Article 226 of the Constitution of India. While referring to the settlement dated 09.08.1995 and the Circular dated 02.12.1995 issued by the respondent - Industries relating to canteen subsidy, he has submitted, that since the year 1989, the cash canteen subsidy was paid at the



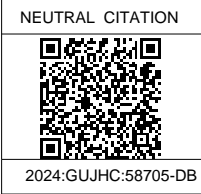
rate of Rs.300/- per month, which was extended to all the supervisory employees of the Corporation Transport Unit and non-subsidized food facility was made available to them, and it has been enhanced from Rs.300/- to Rs.475/- per month with effect from 01.07.1995. It is submitted that since the settlement is a statutory settlement and is canteen subsidy is made available to all the employees, it will form a part of the dearness allowance and will attract the Explanation-1 to section 6 of the EPF, Act, 1952. It is contended that the increase in canteen subsidy from Rs.300/- to Rs.475/- suggests that it is a part of dearness allowance which is connected to the cost of living.

8. Learned Senior Advocate Mr.Shalin Mehta, has submitted that an option is made available to the employees, whether to opt for cash canteen subsidy in lieu of the subsidized food facility or to have food at subsidized rates. It is submitted that the Circular dated 02.12.1995 stipulates that the employees getting cash canteen subsidy will get dual benefits of cash canteen subsidy as well as subsidy on food being served under non-subsidized category. It is contended that in fact, as per the reply filed by the respondent - Industries dated 20.12.1996, 203 workers availed the subsidized canteen facilities, whereas 4980 workers did not utilize subsidized canteen facilities, such as the present appellant. It is submitted that the respondent - Industries have 12 numbers of dining halls, and the rates of various items are prescribed in such dining halls, one for subsidized items and other for non-subsidized items. While pointing out such difference, it is submitted that the learned Single Judge fell in error by placing reliance on the judgment of



Bombay High Court in the case of Tata Power Company Ltd., Vs. Regional Provident Fund Commissioner, Mumbai & Ors., (2008) III LLJ 992. It is submitted that in the said case, the Bombay High Court was dealing with the facts which are not similar to the present case. It is submitted that in fact, before the Bombay High Court in the case of **Tata Power Company Ltd. (supra)**, the Company was not supplying any food and hence, it was observed by the Bombay High Court that “the cash value of any food concession” would not form the part of Explanation-1 to Section 6 and hence, it will not relate to supply of any food as dearness allowance. It is submitted that in the instant case, the respondent - Industries in fact, is supplying the foods to its employees; (i) on subsidized rates and another (ii) on non-subsidized rates to those employees like appellants, who are paid cash canteen subsidy. Thus, it is submitted that in fact, the case of the appellant - Association, who are being paid cash canteen subsidy at the rate of Rs.475/- will form a part of dearness allowance, as stipulated in the Explanation-1 to Section 6 of the EPF Act, 1952 and the consequence thereof would be that the respondent - Industries is require to contribute.

9. It is contended that the learned Single Judge also fell in error in holding that the canteen subsidy will not amount to cash value of food concession and once it does not form a part of dearness allowance, it would not fall within the ambit of either Section 2(b) of the said Act or the Explanation-1 to Section 6 of the EPF Act, 1952.



10. It is asserted that in fact by paying cash canteen subsidy the cost of food is reduced and it can be inferred from the submissions advanced on behalf of the Industries before the authorities below that the food has been supplied at the subsidized rate to the employees, who have not obtained for cash canteen subsidy. It is submitted that only when the food is not supplied, no value of such food can be assessed or calculated however, in the present case, since the items of the food are already supplied by the Industries on a subsidized rate and the rates are also fixed, the value of such concession can always be calculated. Thus, it is submitted that the same would fall under Exception-2 to Section 6 of the EPF Act, 1952.

11. It is submitted by learned senior advocate Mr.Mehta, that in the present case, as per the settlement, the cash canteen subsidy has been made available to all and it is left on the employees, whether they would have their food at the subsidized rate in subsidized canteen or they may avail cash canteen subsidy, and hence the Industries cannot create a class within a class, wherein the PF contributions can be made in those set of employees, who have not availed cash canteen subsidy, but having their foods in the subsidies canteen, whereas denying the same to the employees who are being paid canteen subsidy. It is submitted that this would amount to discrimination amongst the employees and the employees of the appellant - Association, who avail cash canteen subsidy cannot be deprived of PF contribution of such amount.

12. Reliance is placed on the decision of the Supreme Court in the case of Bridge and Roofs Co. Ltd., vs. Union of India, AIR



1963 S.C. 1474, and it is contended by learned senior advocate Mr.Mehta that the Supreme Court has held that whatever is payable in all concerns and is earned by all permanent employees, is included for the purpose of contribution under Section 6 of the EPF Act, 1952, 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. It is submitted that in the present case, the Industries have on the basis of settlement with its employees has declared that the cash canteen subsidy will be paid to all however, it is left on the discretion of the employee, whether they would avail the cash canteen subsidy or subsidized food from the subsidized canteen. Thus, it is submitted that since the amount of Rs.475/- is essential to be paid to all the employees towards the cash canteen subsidy, hence, the same will be in fact cash value of food concession and would be a part of the dearness allowance.

13. In the alternative it is submitted by learned Senior Advocate Mr.Mehta that the cash canteen subsidy will be an emolument, since it is paid to all under the settlement, and hence, it will form a part of basic wages. In this regard, reliance is placed on the decision of learned Single Judge of this Court in the case of Gujarat Cypromet Ltd., Vs. Assistant Provident Fund Commissioner, (2004) 3 G.L.R. 529, wherein this Court has held that lunch allowance would be the part of basic wages, as defined under Section 2(b) of the EPF Act, 1952 and will include the emoluments earned by the employees, which would be amenable for contribution towards provident fund.



14. Learned Senior Advocate Mr.Mehta, has also placed reliance on the judgment of Delhi High Court dated 06.07.2023 passed in the writ petition (C) No.7729 of 1999 in the case of M/s. Whirlpool of India Vs. Regional Fund Commissioner, and has contended that the Delhi High Court has held that the canteen allowance can be treated as an emoluments, which is the part of basic wages of an employee under Section 2(b) of the EPF Act, 1952 and therefore, the same would attract the provisions of EPF Act, 1952. Thus, it is urged that the present appeal may be allowed and the order passed by the learned Single Judge, which is impugned in the present appeal may be set aside.

SUBMISSIONS ON BEHALF OF RESPONDENT-INDUSTRIES :

15. Learned senior advocate Mr.K.S.Nanavati appearing for the Industries, at the outset, has submitted that the impugned judgment and order passed by the learned Single Judge may not be interfered with since the same is precisely passed after appreciating the provisions of the EPF Act, 1952, more particularly, Section 6 and also the nature of canteen subsidy extended to the employee.

16. It is submitted by learned senior advocate Mr.Nanavati that for the first time, after the settlement dated 09.08.1995, the appellant - Association raised the demand for PF contribution on the amount of canteen subsidy of Rs.475/-. It is submitted that one of the core points of negotiation with the Association was that in places where no canteen was available or where the employee's brought food from home and in case of those employees, who consume food from the canteen, the



settlement had arrived at between the Association 09.08.1995 in order to compensate the financial disadvantages and a mechanism of cash subsidy was developed, whereby the financial injuries to the employees was alleviated. It is submitted that as per the settlement, an option was made available to the employees, whether they will have food at subsidized rate or to avail cash canteen subsidy. Thus, it is submitted that in order to appreciate the controversy, two facts are to be borne in mind; (i) that the canteen facilities were not available across the board and (ii) the amount of cash canteen subsidy was by way of recompense to eradicate the difference between those employees, who availed the canteen facilities verses those who either did not have any option or to choose not to avail such option. It is submitted that the appellant - Association presupposed two scenarios, one where the employees are taking subsidy food from the canteen and another where the employees are being paid Rs.475/- as canteen subsidy and hence, in both the scenarios, such employees get food at concessional rate, which would neither attract the provisions Section 2(b) and Section 6 (Explanation 1) of the EPF Act, 1952. It is submitted that this argument itself is fallacious because it fails to consider the third factual scenario, which is that of the absence of canteen altogether or where the employee chooses not to eat from canteen.

17. It is submitted by learned senior advocate Mr.Nanavati that the appellants have sought to distinguish the ratio laid down by the Bombay High Court in the case of **Tata Power Company Ltd., (supra)**. It is submitted that in case of **Bridge and Roofs Co. Ltd., (supra)**, the Supreme Court and



the Bombay High Court in the case of **Tata Power Company Ltd., (supra)** have categorically concluded that Section 6(1) on Explanation 1 of the EPF Act, 1952, applies provided two tests are satisfied i.e. (i) the test of universality (that is to say that the amount is paid across the board, which would also be required to be paid regardless of presence); (ii) the test of supply of food. It is contended that the factual position in the instant case, fails these twin tests because (a) such payment is linked to presence therefore, not universally applied, and is only given commensurate to the number of days present; and (b) food is not universally supplied/ taken.

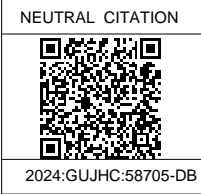
18. Learned senior advocate Mr.Nanavati, has contended that Section 6 of the EPF Act, 1952 has three components, which would attract the contribution of PF; (i) basic wages (ii) Dearness allowance, and (iii) Retaining Allowance (if any).

19. So far as the basic wages, which is defined under Section 2(b) of the EPF Act, 1952, it is contended by learned advocate Mr.Nanavati that the essence of definition is that this amount is to be paid by the employer because it is “earned” by the employee regardless of his / her presence at the place of employment and the words used in this section as “while on duty or on leave or on holidays in accordance with the terms of the contract of employment and which are paid or payable in cash to him / her”, whereas the dearness allowance is an allowance that is paid as a proportion directly linked to the amount of basic wages. It is, thus, submitted that all these amounts, as referred hereinabove, are earned by the employee regardless of whether or not the employee is



physically present. Thus, it is urged that looking to the characteristics of a canteen subsidy, the same will not fall under the Explanation 1 and cannot be read into dearness allowance. Learned senior advocate Mr.Nanavati, has submitted that by way of an Explanation 1 to the main Section 6 of the EPF Act, 1952, a deeming fiction has been brought in to expand the scope of dearness allowance to include “cash value of any food concession” and as per the settled legal precedent that the deeming fiction cannot be stretched in a manner which results into losing the main characteristics of the principal provision. In support of his submission, learned Senior advocate Mr.Nanavati, has placed reliance on the judgment of the Supreme Court in the case of Vineeta Sharma vs. Rakesh Sharma and Ors., (2020) 9 S.C.C. 1. It is submitted that the dearness allowance is a payment that is unconnected to the presence of employee and is directly connected to the cost-of-living barring certain exception, and therefore, the same becomes the principle characteristics to which deeming fiction and surrounding which deeming fiction can be made applicable. It is submitted that in the present case, Rs.475/- is being paid only on presence of the employee and is unconnected to cost of living and to come within the ambit of limitations that the deeming fiction ought to be considered under these two principle characteristics, which are required to be satisfied, and since they are not satisfied, the appellant’s contention cannot be accepted.

20. Learned senior advocate Mr.Nanavati has also placed reliance on the decision of the Division bench of the Madhya Pradesh High Court in the case of Surya Roshni Ltd. vs.



Employees Provident Fund and Ors., 2011 (2) MPLJ 601 and has submitted that since the canteen allowance is an optional amount, the same cannot be included in basic wages. Reliance is also placed on the judgment of the Supreme Court in the case of Manipal Academy of Higher Education vs. Provident Fund Commissioner, 2008 (5) S.C.C. 420.

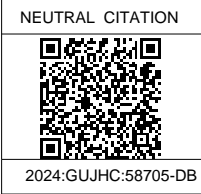
21. In response to the aforesaid submissions advanced by the learned senior advocate Mr.Mehta relating to the subsidized or non-subsidized food that has direct relations to the concession based on which, the cash value be determined, it is submitted by learned senior advocate Mr.Nanavati that each and every employee consumes food every day, and such an interpretation advanced by the appellant becomes unworkable since every employee will not be taking the same food item every day and in the canteens no set of bills are provided for a fixed amount, on which direct correlation of such amount can be determined per employee.

22. Learned Senior Advocate Mr.Nanavati, has further contended that the Explanation-1 to Section 6 of the EPF Act, 1952 uses the word, “concession”, thereby limiting its applicability to ‘subsidy’. It is submitted that there is fundamental difference between the ‘subsidy’ and ‘concession’ and the act contemplates ‘concession’ and nothing else and therefore, it’s a direct discount on the amount payable for an item, which is purchased, whereas the ‘subsidy’ is a cash payment to a person which is not the same as direct reduction of the cost and hence, this is a fundamental difference between two.



23. It is submitted by learned Senior Advocate Mr.Nanavati that the subsidy is a cash payment in hand, as opposed to concession, which is reduction in price at the time of purchase and both have different characteristics and operated at different stages, while a cash payment can be used at any place and for nothing, a concession is only available at the time of purchase thus, both cannot be equated with each other. It is submitted that the canteen subsidy in the present case can be used in variation, meaning thereby, the same can be used for different set of things, even in a case of food. It is submitted that in the present case, it would be impossible to determine the concession for employee, as the same is repeated each and every day, when such person consumed the food.

24. Learned senior advocate Mr.Nanavati while placing reliance on the judgment of the Supreme Court in the case of Shri Ambica Mills Ltd., vs. Textile Labour Association, Ahmedabad, 1973 (3) S.C.C. 787, has submitted that the word “concession” used in the term ‘the cash value of any food concession’ cannot be construed as “subsidy” hence, it will not form a part of dearness allowance. So far as the submissions raised by the appellant - Association by referring to the provisions of Section 2(b) of the EPF Act, 1952, is concerned, which defines basic wages, it is submitted that the appellant cannot raise such contention before the Division Bench, as the authorities below have not accepted the contention raised by the appellant - Association demanding that the cash canteen subsidy would be forming a part of basic wages, as defined under Section 2(b) of the EPF Act, 1952.



SUBMISSIONS IN REJOINDER :-

25. Learned Senior Advocate Mr.Mehta, in response to the aforesaid submission, in rejoinder has submitted that the issue with regard to the provisions of Section 2(b) of the EPF Act, 1952, was raised before the learned Single Judge and the learned Single Judge has categorically held that the canteen subsidy can never form a part of dearness allowance and hence, it would not fall within the ambit of Section 2(b) of the EPF Act, 1952 and hence, the appellant can raise such issue before the Division Bench. It is submitted that even though, the authorities below have rejected the contentions of the appellant - Association to consider the canteen subsidy as the part of basic wages; the appellant can always raise such submissions before the Division Bench in the Letters Patent Appeal also.

26. Learned advocate Ms. E. Shailaja, appearing on behalf of the respondent No.2, while supporting the submissions as advanced by the learned senior advocate Mr.Mehta, has submitted that the amount of canteen subsidy of Rs.475/- is being paid to all the employees uniformly under the settlement hence, it will be the cash value of any food concession, which will form a part of dearness allowance. It is submitted that the authorities below after examination of the nature of canteen subsidy have conclude that canteen subsidy has direct nexus with the cost of living hence, it will be included in dearness allowance by way of deeming fiction provided in the Explanation 1 to Section 6 of the EPF Act, 1952.



ANALYSIS OF FACTS:-

27. The dispute between the appellant - IPCL Employees Association and the Industries relate to “the Cash Canteen Subsidy”, which is being paid at the rate of Rs.475/- to the members of the appellant-Association. The entire case of respective parties hinges on the provisions of Section 2(b) which defines “basic wages”, and Explanation 1 to Section 6 of the EPF Act, 1952, which are as below:

“Section:2

(b) "basic wages" means all emoluments which are earned by an employee while on duty or ¹¹[on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

(i) the cash value of any food concession ;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;

SECTION 6 : Contributions and matters which may be provided for in Schemes

⁵⁷[***] *The contribution which shall be paid by the employer to the Fund shall be ^{58 59}[ten] per cent] of the basic wages, ⁶⁰[dearness allowance and retaining allowance (if any)] for the time being payable to each of the employees, ⁶¹[(whether employed by him directly or by or through a contractor)] and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may ⁵⁸[if any employee so desires, be an amount exceeding ⁵⁹[ten] per cent of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:]*



~~62~~ [Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words " ~~59~~ [ten] per cent", at both the places where they occur, the words " ~~63~~ [twelve] per cent" shall be substituted :]

~~64~~ [Provided further that] where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

~~65~~ [Explanation 1]: For the purposes of this ~~66~~ [section], dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

~~67~~ [Explanation 2 : For the purposes of this ~~68~~ [section], "retaining allowance" means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.]

28. The respondent-Industries has its Employees Provident Fund Scheme, which is in force w.e.f 01.04.1971. Rule 11 stipulates Member's Contribution. The Explanation refers that "The term "Emoluments" used in this rule as well as in other rules shall mean pay, dearness allowance, industrial allowance additional allowance, cash value of food concession and retaining allowance". The cash canteen subsidy at the rate of Rs.300/- was introduced by the Industries in the year 1989 as per the settlement. Thereafter, the settlement dated 09.08.1995 under Section 12(3) read with Section 18(3) of the ID.Act, 1947 was arrived at between the Association and the respondent-Industries, which contained clause 17, increasing the canteen subsidy from Rs.300/- to Rs.475. Due to increase in the cash canteen subsidy to Rs.475/-, the rates of food items



which were supplied in the canteens was also revised. An option is made available to the employees to either avail canteen subsidy or have food at concessional rates in the canteens, and coupons were also provided to such employees. The canteens are run by the Contractors and the value of each of coupon was paid by the Industries to the Contractor. Thus, the difference of amount of bill raised by the Contractor and the amount collected from the employees was borne by the industries. The issue which fell for deliberation before the respondent No.2, was as to whether the differential payment made to the Contractor by the employer/industries fell under the ambit of "the cash value of any food concession", Dearness Allowance or not. The settlement does not contain any explanation as to whether the canteen subsidy will form a part of basic wages or dearness allowance. The relevant clause 17 of the settlement reads as under:

"17: The existing rate of canteen subsidy shall be increased from Rs.300 per month to Rs.475 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 suitable revised at the respective locations in consultation with Unions. All other terms and condition for grant of aforesaid amount shall remain unchanged."

29. The Association, on 21.06.1996, requested the Industries to treat the canteen subsidy of Rs.475/- as a part of dearness allowance and to include the same in addition to the normal dearness allowance for the purpose of contribution towards PF.

30. Before the Regional Provident Fund Commissioner, the respondent - Industries filed their replies in the Inquiry undertaken under Section 7-A of the EPF, Act, 1952. One of the



replies dated 20.12.1996 reflects that the respondent - Industries have admitted that there are 203 workers, who are availing subsidized canteen facilities, whereas 4980 number of workers are not utilizing subsidized canteen facilities, and there are 12 dining halls where the canteen facilities are available. Along with the said reply, the details of rate of various items are prescribed such as, one of the item is "Tea", which is given by subsidized rate at Rs.0.15 paisa, whereas non-subsidized tea is of Rs.1.0. Likewise, other items are provided containing subsidized and non-subsidized rates. The employees like the appellant - Association, who are getting cash canteen subsidy of Rs.475/- if have to purchase an item from the subsidized canteen, the same will cost them at non-subsidized rate, whereas those set of employees, who do not avail Rs.475/- cash canteen subsidy, get an item from the canteen at subsidized rate. Thus, the established fact is that the food is being supplied by the Industries in 12 canteens, one at subsidized rate and other is at non-subsidized rate. The Circular dated 02.12.1995 categorically mentions that the earlier amount of canteen subsidy of Rs.300/- per month was enhanced to Rs.475/- per month from 01.07.1995.

31. By the order dated 25.06.1998 passed by the Regional Provident Fund Commissioner, Vadodara under the provisions of Section 7A of the EPF Act, 1952, the canteen subsidy of Rs.475/- is held to be a form of dearness allowance attracting provident fund contribution. The appellant-Association had raised two fold contentions; (i) to include amount of Rs.475/-, as cash canteen subsidy under the basic wages as defined under Section 2(b) of the EPF Act, 1952, and ii) to consider it as



the part of the dearness allowance. The Regional Provident Fund Commissioner has not accepted the submissions *apropos* 'basic wages' by holding that canteen subsidy will not be an emolument, which is 'earned' by the employees while on duty or on leave or on holiday with wages. However, the Regional Provident Fund Commissioner has held that the cash canteen subsidy will amount to concession and the cash value of any food concession is considered as part of the dearness allowance and the cash value will be dependent on the cost of living as employer is bound to gradually increase difference amount over a period of time to provide subsidized food to the employees. Thus, it is held that the cash value of food supply after concession appears to be dearness allowance and the cash canteen subsidy has direct nexus with the dearness allowance, as it is related to the cost of living and it would attract the provident fund.

32. The learned senior advocates appearing for the respective parties have premised their submissions by placing reliance on catena of judgments of various High Courts. To avoid prolixity, we are not inclined to deal with all the judgments, since the issues raised therein are answered by referring to particular facts in light of the landmark constitution bench judgment of the Supreme Court in the case of ***Bridge and Roofs Co. Ltd (supra)***, which is considered by the Bombay High Court in the case of ***Tata Power Company Ltd., (supra)***.

33. The learned Single Judge has placed reliance on the judgment in the case of ***Tata Power Company Ltd (supra)***



to hold that the cash canteen subsidy will not fall within the expression 'cash value for any food concession' hence, will not be accountable for provident fund deduction. It was contended on behalf of the appellant - Association that the said decision would not apply in the case of the appellant, whereas the respondent - Industries has contended that the learned Single Judge has precisely held in favour of the industries by placing reliance on the said judgment. Thus, it becomes obligatory for us to delve into the facts of the said case.

ASPECT OF 'BASIC WAGES' AND 'CANTEEN SUBSIDY':-

34. We may first deal with the issue as to whether the 'canteen subsidy' can be considered as emolument and will form part of 'basic wages' or not. The issue cannot be answered without examining the decision of the Supreme Court in the case of ***Bridge and Roofs Co. Ltd., (supra)***, which has been considered by the Bombay High Court in its judgment. The Supreme Court in the said case was dealing with the issue of bonus in context of the definition of basic wages under Section 2(b) of the EPF Act, 1952. It is held that the production bonus cannot be included in basic wages as it would keep fluctuating as per the production done by the employees. The Supreme Court while dealing with the exclusion clause (ii) to Section 6 has held that the basis of inclusion of Section 6 and exclusion in Clause (ii) is that whatever is payable in all concerns and is earned by all the 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 concerns is



excluded for the purpose of contribution. It is held that the dearness allowance is payable in all concerns either in addition to the basic wages or as part of the consolidated wages, where a concern does not have separate dearness allowance and basic wages.

35. Similarly, the Supreme Court has held for overtime allowance and house rent allowance that though they are earned in accordance with the terms of contact of employment are taken out of the purview of Section 2(b) of the EPF Act, 1952. The Supreme Court, thus, has held that the basis for the exclusion clause (ii) of the Exception in Section 2(b) of the EPF Act, 1952, is that all that is not earned in all concerns for the employees of the concern is excluded from basic wages, and to this, the exclusion of dearness allowance in clause (ii) is an exception. It is however, held that the dearness allowance, which is an exception in the definition of basic wages, is included for the purpose of contribution under Section 6 and the real exception therefore, in clause (ii) are other exception beside dearness allowance, which has been included to Section 6 of the EPF Act, 1952.

36. The Supreme Court in the case of **Manipal Academy of Higher Education (supra)** has reiterated thus:-

"10. The basic principles as laid down in Bridge Roof's case (supra) on a combined reading of Ss. 2(b) and 6 are as follows:

(a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.

(b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. By way of example it was held that overtime allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in



accordance with the terms of the contract of employment but because it may not be earned by all employees of a concern, it is excluded from basic wages. Conversely, any payment by way of a special incentive or work is not basic wages."

37. In the instant case, the payment of cash canteen subsidy is reliant on the factum of option/choice, and hence, as per foregoing principle (b), the canteen subsidy is available to those who seize the 'opportunity' hence, the same will not be 'emolument', and as a sequel, it will not form part of basic wages. It is also not in dispute that the canteen subsidy is not earned by the employees when they are on leave, and after a period of leave of seven days, it gets forfeited. Hence, the nature of payment of canteen subsidy expels it from the definition of 'basic wages'. The respondent No.2 has precisely held that the canteen subsidy will not fall within the definition of Section 2(b) of the EPF Act, 1952. We do not find any infirmity in the opinion of the learned Single Judge confirming such findings.

ANALYSIS OF EXPLANATION-1 TO SECTION 6 OF THE EPF ACT, 1952, VIS-A-VIS CANTEEN SUBSIDY :-

38. Having answered the issue raised in context of basic wages, now we shall make our endeavor to answer the issue as to whether the provision of Explanation 1 to Section 6 of the EPF Act, 1952, which mentions 'Dearness allowance' with a deeming fiction of including "cash value of any food concession" allowed to the employee will encompass 'canteen subsidy' or not.

39. We may endeavor to decipher the decision of the Bombay High Court in case of ***Tata Power Company Ltd. (supra)***. In



the case before the Bombay High Court, where Tata Power Company Limited was the petitioner, it was contended on its behalf that the food allowance, which was being paid by the company to its employees under the settlement is “cash value of any food concession” would not be a part of the dearness allowance under Explanation 1 to Section 6 of the EPF Act, 1952. The settlement as recorded in the said judgment between the company and the Union, reflects that the food allowance of Rs.1200/- would be paid to the employees where there are no canteen facilities and in the division where canteen exists for the employees would be paid food allowance of Rs.900/- per month and in addition, worth Rs.310/- would be issued every month, for which a deduction of monthly contribution of Rs.10/- will be made from the salary of each employee. A dispute was raised by the Union before the Provident Fund Commissioner that food allowance of Rs.1200/- should be included for the purpose of employee’s contribution under Section 6 of the EPF Act, 1952. Ultimately, the PF Commissioner held in favour of the employees by recording that the said payment is cash value of food allowance and hence it forms a part of the dearness allowance. The fact recorded by the Bombay High Court is that the Tata Power Company Ltd., does not provide any food to its employees and since the canteen facilities were discontinued by the Company, the parties entered into some negotiation by way of settlement. The Bombay High Court has thereafter, examined the meaning of term “cash value on any food concession”, in context of Explanation 1 of Section 6 of the EPF Act, 1952, it is held that the term of “the cash value of any food concession” allowed to the employee means such value of component by



which price of item is reduced. It is thus, recorded that this necessarily postulates the provision of supply of any amenity such as food-grains and without such supply, it would not be possible to calculate the “the cash value on any food concession” allowed to the employee. This observation is recorded in context to the fact that there being no supply of any food by the petitioner (Tata Power Company Ltd.), the payment of food allowance cannot be treated as cash value of food concession allowed to the employee. On the contrary, in paragraph No.17, the submissions advanced by the learned counsel for the respondent-employee was recorded to the effect that the petitioner (Tata Power Company Ltd.) was supplying some food at concessional rate and the cash value of the concession would be liable to be included however, the Bombay High Court has denied such submissions by recording that there is no material produced by the respondents and petitioner (Tata Power Company Ltd.) has denied it. Finally, in light of the facts, it is held that the food allowance cannot be treated as cash value of food concession since there was no supply of food.

40. Thus, the distinguishing feature in both the cases, in the case of **Tata Power Company Ltd., (supra)** and the present case, is the supply of food in the subsidized canteens run by the Industries. The dispute which was raised by the Union before the Bombay High Court related to food allowance of Rs.1200/-through salary, in absence of food supply and non-existence of the canteens. In the present case, it is admitted position by the respondent - Industries that it is providing subsidized food in 12 canteens. There are 203 employees, who

avail the facility of these canteens by consuming food at subsidized rates, whereas the present appellants chose to have cash canteen subsidy. The details of the food items are as under :-

(a)	No. of workers availing subsidised canteen facilities	203
(b)	No of Workers who are not utilising subsidised canteen facilities	4980
(c)	The rates of various items are given in the enclosed statement.	
(d)	No. of dinning halls where the canteen facilities are available.	12
Rates of various Items		
Item	Subsidised	Non - Subsidised
Tea	0.15	1.00
Coffee	0.30	2.00
Snack	0.20	2.50
Veg. Meal	1.00	6.50
Rice Plate	0.75	4.50
Puri Bhaji	0.60	3.50
Veg / Dal	0.10	2.00

41. At this stage, It would be apposite to refer to the relevant paragraphs of the judgment of the Bombay High Court in the case of **Tata Power Company Ltd. (supra)**, which reads as under :-

"11. At first blush, it appears that if any concession is capable of being computed in cash, such value must be included as dearness allowance. According to the Respondents any amount paid for food is a good concession. Therefore, even if an employer does not provide any food at all the amount paid by the employer for purchasing such food is in this case under the food allowance must be treated as the "cash value of any food concession".

12. Now one thing is clear, that the term must be interpreted as a whole having regard to the object of the legislation. In the first place, the term points



to the cash value of any food concession allowed to the employee i.e. the value of the concession in regard to food i.e. the value by which the price of food is reduced. This presupposes that food is provided to the employees as part of the terms and conditions of employment as seems to be the practice in some employments. It is only where food is supplied at a concession that that the cash value of the concession can be computed. The Dictionary "The Concise Oxford" Ninth Edition describes the meaning of 'concession' as follows:-

"concession. 1a 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 adj. concessionary adj. [French concession from Latin concessio (as CONCEDE)"

15. One thing that is clear from the decision is that there has been a practice in industrial employment in this country where the cash value of various benefits concessional supply of food grains is computed while reckoning the charges 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.

16. 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.

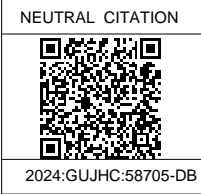
17. At this juncture, the learned counsel for the respondent submitted that the petitioner supply some food at a concessional rate and the cash value of the



concession would be liable to be included. There is no material produced by the respondents and the petitioner vehemently denies this fact.

42. Thus, the Bombay High Court, after examining the facts of the said case, has held that “the term points to the cash value of any food concession allowed to the employee i.e. the value of the concession in regard to food i.e. the value by which the price of food is reduced. This presupposes that food is provided to the employees as part of the terms and conditions of employment. It is categorically held that only where “food is supplied at a concession, the cash value of the concession can be computed.” It is further observed that without the supply of the food, it would not be possible to calculate the value of food concession hence, the payment of food allowance cannot be treated as cash value of food concession.

43. In the present case, it is established that the respondent - Industries are supplying the food in 12 canteens at subsidized rates through Contractors. The rates of food items of both the categories are fixed. The cash canteen subsidy has been made available to all employees in view of statutory settlement. It has been revised from Rs.300/- to Rs.475/- and further revised to Rs.525/- per month w.e.f 01.01.2002. Simultaneously, the Industries has revised the rate of food items in both the categories. Thus, revising of the rates of food items has direct nexus to the cost of living, which is an integral part of dearness allowance which is paid to the employees to offset the adverse impact of inflation. The price of food items has direct nexus to inflation hence, they are amendable to revision and as a consequential effect, the canteen subsidy is also revised. The term cash value of food concession, though cannot be qualified



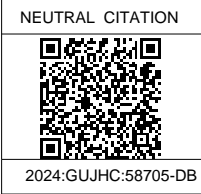
as dearness allowance *stricto sensu*, but the legislature has supplied a deeming fiction to include the same in the dearness allowance looking to the basic nature of the both the components. The characteristics of 'the cash value of any food concession' and 'dearness allowance' are analogous and are interlaced with each other. The legislature in its wisdom has aptly excluded both from the ambit of Section 2(b), but they are included for the purpose of deduction of contribution towards provident fund in Section 6 of the EPF Act, 1952. Explanation 1 to Section 6 of the EPF Act, 1952 uses the language "dearness allowance shall be deemed to include also the "cash value of any food concession 'allowed' to the employee". Thus, cash value of food concession has the color of 'allowance', and is included in dearness allowance due to deeming fiction. All three benefits, the dearness allowance, supply of food at concessional rates and canteen subsidy are admissible to the employees in the course of employment. Canteen subsidy is nothing but synonym to food concession or, discount offered on food.

44. On a specific query raised by us to learned senior advocate Mr.Nanavati relating to the inclusion of 203 employees in the expression 'the cash value of any food concession', as they were having their food at concessional rates in the subsidized canteen wherein the rate of every item is fixed, it was not specifically denied that they will not be included. Thus, it would mean that one set of employees, 203 in number, get covered under the expression of 'the cash value of any food concession' under Explanation 1 to Section 6 of the EPF Act, 1952, whereas the other set of employees,



4890 like the appellants, who are paid Rs.475/- cash canteen subsidy is barred. The respondent - Industries is paying Rs.475/- as cash payment, and, such payment, is a cash value of the food, available at concessional rate to other set of employees, who have their food at subsidized rate in its canteens. The price of each item of food for both the categories of employees is fixed and revised in the canteens. The cash canteen subsidy has direct nexus to the rates of items of food which are being sold at subsidized rates to the employees who have not opted for cash canteen subsidy. Thus, it can be said that the subsidized rates of food items in canteens are fixed keeping in mind the cash canteen subsidy or it can be vice versa also. Such cash value of the subsidized food in canteens, in fact is a concession in the form of cash subsidy, and hence, it will satisfy the expression “ cash value of any food concession” which will indubitably form a part of dearness allowance.

45. While placing reliance on the judgment of the Supreme Court in the case of **Vineeta Sharma (supra)**, it is contended on behalf of the Industries that ‘cash value of any food concession’, which is introduced by deeming fiction, cannot be stretched to an extent which takes on the character of dearness allowance, which is completely different facet. It is contended that the principal characteristic of dearness allowance is that it is unconnected to the presence of the employee in the Industries, whereas the cash canteen subsidy is paid only on presence and is unconnected to cost of living. We do not subscribe to the said submissions, since if such submission is accepted, it will be an anathema to the term



“cash value of any food concession”, which exclusively depends on the supply of food at concessional rate and its consumption. The employees, who avail the food at concessional rates in the canteen are not compelled to have the same everyday. The expression ‘cash value of any food concession’ has the genesis in the consumption of food by the employees in the canteens run by the Establishments, and it depends on their presence. An employee may not take the food at concessional rates everyday, but the same cannot absolve the Establishment from deductions to provident fund entirely. On the same analogy, the cash canteen subsidy is paid to the appellant in lieu of consuming the food supplied at concessional rates in the canteens. They are allowed to consume food at regular rates in comparison to subsidized rates in the same canteen. Thus, the deduction of the provident fund under Section 6 of the EPF Act, 1952, does not envisage any eventuality as canvassed by the Industries. It is also contended that it is impossible to keep track of employees who consume food at unsubsidized rates after availing canteen subsidy, and hence the food concession is impossible to determine. The subsidized canteen has to be audited and the subsidized amount of food items is required to be audited to determine the value of food concession. Such a situation can be taken care of by the Industries and the contractors who run the canteen. The compliance of the statutory requirement cannot be contingent to the inability to calculate the cash value of food concession. When both subsidized rates and unsubsidized rates of food are available, and their rates are also revised occasionally; the cash value of food concession can be determined *apropos* canteen subsidy. The difference of



amount collected from the employees and the bill raised by the contractors is being borne by the industries. The Industries have also made an attempt to differentiate the terms “allowance” and “subsidy” by placing reliance on the decision in the case of ***Shri Ambica Mills Ltd(supra)***. However, the decision does not in any manner apply to the issue raised in context of Section 2(b) and Section 6 of the EPF Act, 1952. The meaning of cash canteen subsidy has to be considered in context with the supply of food at concessional rates in the canteens. It cannot be viewed as an isolated trait independent of supply of food at concessional rates since both are interlaced with each other.

46. It is well settled legal proposition of law that a beneficent provision of legislation must be liberally construed so as to fulfill the statutory purpose and not to frustrate it, and in case there are two views possible, the Court of law will always adopt the view which would be beneficial to the employees/workers. The Courts will be slow in adopting the view which would frustrate the purpose of the beneficial legislation.

FINAL ORDER

47. Thus, on an overall threadbare analysis of the facts and law as well the judicial precedents, we hold that the ‘cash canteen subsidy’ will satisfy the expression ‘the cash value of any food concession’ and will fall under Explanation 1 to Section 6 of the EPF Act, 1952 and will be part of the dearness allowance by virtue of deeming fiction, hence amenable to deductions towards provident fund. The learned Single Judge has erred in quashing and setting aside the orders passed by



the statutory authorities. The Letters Patent Appeal, merits acceptance. The same is allowed. The impugned judgement and order passed by the learned Single Judge dated 10.01.2011 is quashed and set aside. The order dated 25.06.1998 passed by the respondent No.2, the Regional Provident Fund Commissioner and the subsequent orders confirming the same are declared to be legal and valid. Accordingly, the benefit arising out of such orders shall be paid w.e.f the date of order of 7-A within a period of three months from the date of receipt of writ of the present order.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(GITA GOPI,J)

:: FURTHER ORDER ::

After the judgment was pronounced, learned senior advocate Mr.Nanavati, has requested to stay the implementation and operation of the present order. The request is denied in view of the aforesaid facts and looking to the controversy since the same is being going on from the year 2000 and also in wake of the fact that we have already granted three months of the time for implementation of the present order.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(GITA GOPI,J)

MAHESH/01