BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-1, DELHI

D-1/70/2019

M/s. Prabhatam Infrastructure Ltd. vs. APFC/RPFC, Delhi North.

Present: Sh. S.K Khanna & Sh. H.D. Sharma, Ld. Counsels for the Appellant.
Ms. Santwana Aggarwal, Ld. Counsel & Sh. Mahender Meena AR for the Respondent.

Order dated-29.10.2025

1. A very short question arises in this appeal, whether daily wagers who are getting Rs. 525/- per day on daily wages would come within the purview of the definition of "excluded employee", or they are required to become members of the provident fund, as their wages, if calculated based on the days they actually worked is less than Rs. 15,000/- per month.

2. The appellant has assailed the order passed by the Ld. Provident Fund Commissioner on 30.04.2019, whereby dues to the tune of Rs. 16,44,950/- were calculated for the period from 04/2016 to 10/2017, which the appellant is required to pay for the contribution in the provident fund of the employees working there who were getting less than Rs. 15,000/- as monthly wages. He has assailed the said order on various grounds, inter-alia, that the impugned order passed by the respondent is perverse, arbitrary, non-speaking order and unsustainable in the eyes of law; impugned order was passed without considering his submission; order was passed under inapt understanding of labour laws and conveniently molded the working days as six in a week and multiplied the basic wages by 26 days in a month. He had drawn the attention of this Tribunal towards the Para 2(f)(ii) and Para 26 of chapter-IV of the EPF Scheme, 1952, where the eligibility of the member under the EPF Scheme has been provided.

3. Respondent has filed a reply raising several objections, however, the main objection is that the establishment failed to enroll the employees who were appointed at Rs. 525/- per day and showed them excluded employees as per monthly wages exceed Rs. 15,000/- by 30 days. Even, as per labour laws and the calculation method adopted by government authorities, minimum wages is divided by 26 to get the minimum wages. Hence, the workers who are paid daily wages Rs. 525/- per day are eligible for PF benefits, as they were getting less than 15,000/-, and therefore, they cannot be treated as excluded employee under para 2(f) of the EPF Scheme, 1952.

4. He further relied upon the judgment of ***State vs Giridharilal Bajaj, 1962 II LLJ 46 (Bom. DB)*** wherein the Hon'ble High Court had stated that *when there is doubt of their meaning, it is to be understood in the sense in which it best harmonise with the subject of the enactment and the object which the legislature has in view*.

5. I have heard the argument at bar and perused the impugned order under the appeal. Before proceeding further **Para 2(f)(ii) and Para 26(1) of chapter-IV of the EPF Scheme, 1952** are required to be reproduced herein:

Para 2(f) (ii) of the EPF Scheme, 1952:

> **"excluded employee" means—(ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds [fifteen thousand rupees] per month;**
>
> **Explanation : --'Pay' includes basic wages with dearness allowance [retaining allowance (if any) and cash value of food concessions admissible thereon;]**

Para 26(1) of chapter-IV of the EPF Scheme, 1952-

> **26. Classes of employees entitled and required to join the fund-**

> **(1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment.**
>
> **(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:**
>
> **Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the Fund, shall become a member of the Fund forthwith.**

6. Chapter-IV of the EPF Scheme, 1952, deals with the membership of their funds. Para 26 states that every employee employed or in connection with the work of a factory or other establishment shall be entitled and required to be become a member of the fund, other than an excluded employee. Para 2(f)(ii) of the EPF Scheme, 1952, provides that an excluded employee is those employee whose pay, at the time he is otherwise entitled to become a member of the fund, exceeds Rs. 15,000/-.

7. The main plea of the appellant's counsel is that the employee/daily wager earning Rs. 525/- per day should be treated as an excluded employee, because he has been getting salary more than Rs. 15,000/- if multiply by 30 days. While the respondent's contention is that all the

employees have been getting less than Rs. 15,000/- per month because they have been getting always less than Rs. 15,000/-, because they work only 26 days in a month, not 30.

8. No doubt, the "month" is generally defined as 30 days in the General Clause Act. However, since the EPF Act is a social welfare legislation, and it has been provided the provision of excluded employee whose monthly salary exceeds Rs. 15,000/- per month. Therefore, by no stretch of imagination, it can be said that workmen had worked in whole of the month continuously without taking any break and received salary more than Rs. 15,000/-. It is inhuman that a worker is asked to work for whole 30 days. Moreover, the record has not been produced by the appellant to buttress that any of the employees actually earned more than Rs. 15,000/- in a month. Therefore, the question of treating these daily wagers as excluded employees does not arise.

9. Another plea taken by the appellant is that the Regional Provident Fund Commissioner-II is not the appropriate authority to decide on the eligibility of the member. If there is any doubt regarding eligibility, it has to be decided by RPFC as per Para 26 of the Scheme. However, this plea is not tenable, particularly in view of the fact that there was no doubt in the mind of the RPFC about the eligibility of the daily wagers receiving Rs. 525/- per day. Merely raising such a plea does not make sense that has been decided by the RPFC. Assessing Officer has rightly held that the daily wager who has been getting Rs. 525/- per day cannot be treated as excluded employees, and the appellant is required to enroll them as eligible employee under the Scheme, as they have always been getting less than Rs. 15,000/- per month.

10. In view of above discussion, appeal stands dismissed. The **Bank Manager, SBI, Jhandewalan Ext., New Delhi,** is directed to release the amount along with accrued interest which is deposited vide **FDR Account No. 41119140382** in favour of **Regional PF Commissioner, Delhi (North)** forthwith. Office is directed to handover the said FDR to A/R of the respondent. Consign the record to the record room.

Sd/-
Atul Kumar Garg
(Presiding Officer