HIGH COURT OF GUJARAT

FAG PRECISION BEARINGS LIMITED
Versus
REGIONAL PROVIDENT FUND COMMISSIONER

Date of Decision: 21 October 2016

Citation: 2016 LawSuit(Guj) 2267

Hon'ble Judges: K M Thaker

Case Type: Special Civil Application

Case No: 12017 of 2011

Subject: Labour and Industrial

Acts Referred:
Industrial Disputes Act, 1947 Sec 18(a)(1), Sec 2(p)
Employees Provident Funds And Miscellaneous Provisions Act, 1952 Sec 7A

Final Decision: Petition disposed

Advocates: Nanavati Associates, E Shailaja

Cases Referred in (+): 6

K M Thaker, J.

[1] Heard Mr. K.S.Nanavati, learned Senior Counsel, with Mr. Gandhi, learned advocate, and Mr. Desai, learned advocate, for the petitioner, and Ms. Shailaja, learned advocate for the respondents.

[2] In present petition, the petitioner has prayed, inter alia, that:-

> "18(A) Your Lordships be pleased to issue a writ of mandamus or a writ in the nature of mandamus, or any other appropriate writ, order or direction quashing and setting aside the judgment and order dated 15.7.1998 passed by the Regional Provident Fund Commissioner under Section 7A of the Act and order dated 15.12.2010 in ATA 160(5) of 2002 passed by the learned Presiding Officer, Employees' Provident Fund Appellate Tribunal, New Delhi, in the facts and circumstances of the case and in the interest of justice;"

[3] On the basis of inspection report/visit dated 28.7.1995, the RPFC had issued summons/notices dated 22.2.1996 and thereupon the respondent APFC initiated proceedings under Section 7A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 [hereinafter referred to as "the Act"] against present petitioner on the premise and allegation that though the petitioner company paid salary (wages) to its employees which comprised, inter alia, four components viz. (i) leave encashment, (ii) officiating allowance, (iii) food subsidy, and (iv) production incentive, however, the employer failed to pay provident fund contribution in respect of the amounts paid to the workmen towards said components and thereby the employer committed breach of the provisions under the Act. On such premise, the APFC initiated proceedings to recover the P.F. Contribution and called upon the petitioner to show cause as to why the provident fund contribution in respect of the said components should not be recovered.

3.1 The petitioner company opposed the demand and replied the notice claiming, inter alia, that the said components would not fall within the purview of the term "wages" as defined under the Act and that therefore, the amounts paid towards the said components was not liable for provident fund contribution and the APFC's demand was unjustified.

3.2 The APFC did not find the company's reply satisfactory and therefore, he proceeded with the inquiry under Section 7A. The notice was adjudicated and upon conclusion of the proceedings, the APFC after hearing the petitioner, passed order dated 15.7.1998 holding, inter alia, that the said components would fall within purview of the term "wages" and the amounts paid towards the said components were liable for provident fund contribution.

3.3 The petitioner company felt aggrieved by the said order dated 15.7.1998 and that therefore, the company filed appeal before the learned Employees Provident Fund Appellate Tribunal. The appeal was registered as Appeal (ATA) 160(5) 2002. The learned Tribunal heard the appeal and after considering the submissions by the company and on behalf of the department, the learned Tribunal partly allowed the appeal, inasmuch as the learned Tribunal held that two components viz. (i) leave encashment, and (ii) officiating allowance do not come within purview of the term wages and the amounts paid towards said two components are not liable for provident fund contribution.

3.4 According to the decision by learned tribunal the provident fund contribution would be payable in respect of food concession /subsidy and incentive allowance (production incentive). Learned tribunal remanded the case to APFC to quantify the amount of demand by excluding the amount paid towards leave encashment and

by taking into account the amount paid towards food concession and production incentive.

3.5 Feeling aggrieved by the said decision by learned tribunal the petitioner company has taken out this petition.

[4] It is necessary to mention at the outset that so far as tribunal's decision with regard to two components viz. leave encashment and officiating allowance is concerned, the department has not challenged order of learned tribunal and the department has accepted the decision of learned tribunal on that count. Therefore, learned Tribunal's decision to that effect and that extent has attained finality.

[5] Before proceeding further it is also relevant to mention that out of two components in respect of which dispute subsits after order of learned tribunal i.e. food subsidy and production incentive, the issue related to food subsidy is no more re-integra inasmuch as the said issue is decided by this Court vide CAV order dated 10.1.2011 in case of Indian Petrochemicals Corporation vs. Regional Provident Fund Commissioner in SCA No. 4294 of 2000. This Court vide decision dated 10.1.2011 held that the amount paid toward food subsidy does not come within purview of wages and is not liable for provident fund contribution. Similar view is taken in the decision in case of Deepak Nitrate. Therefore, this Court is bound by the said decisions and in light of the said two decisions it has to be held that the learned tribunal's decision so far as said benefit i.e. food subsidy / officiating allowance deserves to be set aside and the learned tribunal's said decision is hereby set aside in light of the said two decision.

[6] This leaves behind the dispute with regard to production incentive.

6.1 Mr. Nanavati, learned Senior Counsel for the petitioner submitted that the company entered into wage revision settlement with workmen / union and by said settlement the company introduced "production incentive scheme". The scheme provides formula for payment of incentive / bonus with a view to increasing production. He submitted that the amount paid by the petitioner company to the employee by way of production incentive is in nature of "bonus" and in view of the provisions under the Act, more particularly in light of the definition of the term "basic wages", said incentive (bonus) is excluded component and not liable for provident fund contribution. He submitted that according to the formula (prescribed under the settlement) for payment of production incentive, there is no uniformity in payment of the amount which are payable towards production incentive and they are subject to changes and that essentially the payments depend upon increase in production over base level. It is also submitted that even the "base level" has changed from time to time and it is modified / enhanced over period of time. The

substance of employer's submission is that the amount payable towards incentive and the formula for computing the incentive are not stagnant but they are subject to changes. He further submitted that there is no uniformity in the payment either in the industry or even amongst all employees of the company. It is claimed that such amount is not paid by all industrial concerns in the industry in the area. He also submitted that said scheme provides for productivity link which is based on cumulative production output. He also submitted that the amount paid to the employee towards production incentive is in addition to basic wages payable to the employer. He submitted that when the workers produce articles beyond standard quantity determined by the company, they are paid incentive for superior performance and that the said incentive is actually in nature of bonus and not part of basic wages. He submitted that P.F. Contribution payable in respect of basic wage, DA are paid irrespective of the fact that standard quantity output is achieved or not.

The learned Senior Counsel for the petitioner submitted that even if the standard output is not achieved then also amounts towards salary are paid to the employee without any deduction or changes and P.F. Contribution in respect of such salary is also paid regularly.

6.2 He also submitted that actually employees in respect of whom demand is raised are excluded employees inasmuch as their salaries are in excess of the statutory limited prescribed under the Act and that therefore authority lacked the jurisdiction or authority in law to initiate proceedings and to adjudicate cases of "excluded employees" and/ or to demand payment of provident fund contribution in respect of "excluded employees".

6.3 He also assailed impugned order passed by the learned tribunal on the ground that it is nonspeaking and unreasoned order and it does not deal with any of the contentions raised by the petitioner and the order also does not deal with the decisions on which the petitioner relied at the time of hearing. He submitted that the employer's contentions, which are supported by the judgment of Hon'ble Apex Court, have not been discussed and any findings after considering relevant contentions have not been recorded. According to learned Senior Counsel for the petitioner impugned order, which is nonspeaking and unreasoned, is not sustainable. He also submitted that the learned appellate tribunal also passed the order without proper application of mind to the relevant facts of the case, scheme and formula introduced by the company and true and exact nature of the scheme / formula.

[7] Per contra, Ms.Shailaja, learned advocate for the respondent supported the order passed by the learned Tribunal. She also submitted that learned tribunal has recorded sufficient reasons and appropriate conclusion, after taking into account all contentions and the decisions relied on by the petitioner. She also submitted that by "branding" part of wages as "production bonus" the petitioner has tried to escape obligation to pay provident fund contribution and actually the amounts which are paid in style and in garb of "production incentive" are actually "basic wages". She also submitted that after examining the record, more particularly the scheme and method and manner of determining production incentive and the amount paid to the employees, the adjudicating authority found that actually the amounts have been paid by the employer to ensure standard level of production. Learned advocate for the department relied on the decision in case of Gujarat Cypromat Limited,2002 3 GLR 2369 and the decision in case of Daily Partap v. The Regional Provident Fund Commissioner, Punjab & Ors., 1999 AIR(SC) 2015 and she submitted that except the items which are specifically and expressly excluded by the Act all components of salary would fall within purview of "basic wage" and that therefore, they would be liable for provident fund contribution. She submitted that the amount paid by the company to the employee in style of or in garb of production incentive is actually paid to the workers in view of the condition of appointment and for the work done by the employees and that therefore the contention that the said payment / component does not from part of basic wage could not be accepted.

7.1 The learned advocates for the petitioner and respondent relied on the decision in case of TI Cycles of India vs. M. K. Gurumani, 2001 2 LLJ 1068, Manipal Academic of Higher Education v/s. Provident Fund Commissioner, 2008 AIR(SC) 1951 and Bridge and Roof Company (India) Limited v/s. Union of India, 1963 AIR(SC) 1474, Gujarat Cypromat Limited,2002 3 GLR 2369 and the decision in case of Daily Partap v. The Regional Provident Fund Commissioner, Punjab & Ors., 1999 AIR(SC) 2015.

[8] Before considering the submissions with regard to the scheme, it is appropriate to take into account observations by Hon'ble Apex Court so that rival contentions can be examined in light of the observations by Hon'ble Apex Court and the principles explained by Hon'ble Apex Court.

8.1 In the decision in case of Jay Engineering Works Limited Hon'ble Apex Court considered the scheme for production bonus of minimum basic wage and DA which would be paid to the workmen irrespective of the fact as production matched prescribed norms which would be taken into account for payment of production bonus, or not.

8.2 The details with regard to operation of the scheme are elaborated in paragraph No. 4 of the judgment whereas it is observed, inter alia, that:-

4.... The petitioner's case is that the entire payment for production above the quota is payment of production bonus and therefore cannot be taken into account for the purpose of provident fund in view of the decision in Bridge and Roof Company, 1963 AIR(SC) 1474..... The workmen, therefore, contend that in a scheme of the kind prevalent in the petitioner-company production bonus as well as understood in industry only starts after the norm and that payment for production between the quota and the norm is nothing more than basic wage as defined in the Act and that the exception of bonus from basic wage will only apply to that part of the payment which is made for production above the norm."

8.3 Having noticed the features of the production bonus scheme Apex Court examined the aspect of production bonus and in that context Apex Court referred to the decision in case of Ms/ Bridge and Roofs Co. Ltd., 1963 AIR(SC) 1474).

8.4 In light of the production of the scheme which was introduced by the company the Court held that any payment for production above norm would be real production bonus under the scheme in force in the company. The production up to the norm is standard which is expected from the workman in the company and payment up to that production must be basic wage as defined under the Act and that only part that of payment which was in respect of production above norm in case of the company can be called production bonus. The court further observed that for payment of work done between the quota and the norm cannot be treated as other similar allowance. Thus having noticed that company had prescribed quota as well as norms and provided that production above level of norm would be eligible for production bonus, Apex Court held that the extra payment made to the workmen for production above level of "norm" would alone be classified or considered as production bonus and only that payment will not be liable for provident fund contribution.

[9] So as to appreciate the dispute and rival submissions, it is necessary to take into account relevant provisions under the settlement whereby the Productivity Linked Earning Scheme came to be introduced by the petitioner. Relevant provision of the said scheme (which is placed on record of this petition under additional affidavit dated 29.7.2006) read thus:-

"3.0 SCHEME:

The final output in terms of bearing quantity transferred to Bearing Stores during productivity period will be converted into quantity per man per working day. This

will form basis for productivity linked earnings.

Details are as under:

3.1 BASE PRODUCTIVITY LEVEL:

The base productivity level has been considered 12.666 million bearings per annum with QMD 26.45 based on average man-power 1550 engaged to produce said quantity of bearings. Total man-power will be as per actual manpower used during relevant financial year including overtime converted into equivalent men and casuals used.

3.2 CALCULATION OF PRODUCTIVITY LINKED EARNING:

Productivity earning for the month

= (FR x No. of Months x AF) (Actual Productivity Earning paid upto previous month in a relevant financial year)

ER = Productivity Earning Rate as per Annexure-I

No. of Months = Cumulative No. of Months fr the relevant financial year.

AF = Attendance Factor

Cumulative Working days Cumulative Unpaid Leave (LWP, Unauthorised & ESI)

AF =

Cumulative Working days

Here Paid Leaves like CL, SL & AL will be considered as attendance.

4.0 MODE OF PAYMENT:

Productivity Earning will be paid on month to month basis. However, payment will be made w.r.t. Cumulative Achievement as defined in Clause 3.2 above.

5.1 Payment will not be considered as wages for any benefits including statutory benefits. However, if any statutory authority directs to consider this payment under any existing or new law, the necessary deductions shall be made from these payments and/or wages payable in workmen accordingly.

5.2 The earning in the Annexure-I has been worked out based on average headcount 1550 per month. Any change in employment of headcount number will result into change in QMD and thereby monthly earning. The cumulative performance in terms of QMD and earning shall be based on output of bearings produced from 1st April to 31st March for respective financial year i.e. entitlement of earning under the scheme will be restricted to the respective financial year only. Once the financial year expires, the entitlement of earning and QMD for the following financial year shall be based on average man-power engaged and the output in terms of bearings in relevant financial year."

9.1 According to the scheme, at the time when it was introduced in July 1995, the base productivity level was considered 12.666 million bearings per annum with QMD 26.45 based on average man-power 1550. The formula to determine QMD is found in clause 5 of the scheme which reads thus:

"5. QMD = Quantity / Manday =

$$\frac{\text{Cumulative Production Quantity}}{\text{Working days x Average Manpower (during 4/95 to 9/95)}}$$

$$= \frac{78,00,000}{156 \times 1570}$$

$$= 28.58"$$

9.2 Total man-power which would be taken into account for calculating the productivity level would be actual man-power used during relevant financial year including overtime converted into equivalent employees. One of relevant and important conditions is found in clause No.4.1 which prescribes that,

"4.1 In case in a month productivity linked earning amount comes negative, this amount will be adjusted subsequently against his productivity linked earning."

9.3 Of course, the scheme provided that the amount paid under the scheme will not be considered wages for any benefit including statutory benefits.

9.4 The company, however, provided a rider that if any statutory authority passes direction to consider the payment under the scheme, then, necessary deductions shall be made from the payment of wages payable to the workman.

9.5 The implementation of the scheme is explained by an illustration where the cumulative baring production is taken at 70,00,000 bearings with use of 1570 man-

power. According to the example, the formula for calculating productivity is applied to the said two inputs namely, production of 70,00,000 bearings with use of 1570 manpower; and the said total production with above mentioned man-power is considered for entire productivity period. Then the quantity per end day, is derived at 28.58 in below mentioned manner:-

"5. QMD = Quantity/Manday = $\frac{\text{Cumulative Production Quantity}}{\text{Working days x Average Manpower}}$

(during 4/95 to 9/95)

= $\frac{70,00,000}{156 \times 1570}$

= 28.58"

9.6 The illustration is desinged by considering case of an employee who avails 7 unpaid leave during 156 cumulative working days. In that case, the attendance factor is derived at 0.955. The said result i.e. 28.58 quantity per man day and 0.955 attendance factor is, then, applied in below mentioned manner to arrive at the productivity earning of an employee.

"8. Productivity Earning Paid upto 8/95 = Rs.2895.00

9. Productivity Earning = (ER x No.of Month x AF) = Actual Earning

paid upto 8/95

i.e. (6150+490) x 6 x 0.955) = (2895)

= (3667.2 2895)

= Rs.772.30"

[10] According to the petitioner, the adjudicating authority ought to have taken into account the said explanation with regard to implementation of the scheme and to examine the said details in light of the principles and criteria explained by Hon'ble Apex Court and to ascertain as to whether the scheme meets with and fulfills the said criteria and principles or not, i.e. as to whether it provides for payment to meritorious workman who give extra output and whethe4r it has direct nexus and linkage with amount of extra output produced by eligible workman and whether the payment towards production bonus or incentive bonus depends on production at the pre-decided

norm/minimum level of production, i.e. payment by way of production bonus is made to the workman who put extra work beyond what was normally required and whether the amounts are paid uniformly without having nexus with the amount of extra output and whether the scheme / formula measures extra output of the workman or it is different and more complicated method of calculating piece rate wages for the employee in paying bonus for extra output.

[11] When the impugned order is examined, it comes out that the authority failed to analyze the scheme/formula in light of and by applying the principles and criteria explained by Hon'ble Apex Court. The only discussion with regard to the scheme/formula and the issue related to basic wages and production bonus found in the impugned order is quoted below:-

> "In the instant case, it has emerged that the incentive has been paid by the establishment to ensure standard level of production. Hon'ble Supreme Court has clarified in this regard in the above case that whenever the workers produce beyond the base or standard level what they earn would not be basic wages. Conversely, therefore, it can be said that whenever the workers produce less or equivalent to base or standard level whatever they earn would be basic wages. In this position the payments made in the form of incentive here shall be basic wages eventhough these payments are made in accordance with the scheme as the Hon'ble Supreme Court in the union of India and others Vrs Ogle Glass Workers held that he award of industrial tribunal can not stand in the way of enforcing the statutory provision cast on Regional P.F. Commissioner, under E.P.F. & M.P.Act, 1952. In view of that any agreement entered into between employer and employees union against the deduction of P.F. on the incentive of the present nature is not binding on the department. In this position if we look upon the definition of basic wages, it is found that the incentive of the present kind comprises of all the ingredients of Basic Wages. Thus it is decided that such incentive shall attract P.F."
>
> 11.1 It is noticed from the said observations that the adjudicating authority has not examined the formula and has not analyzed the formula in light of the guidelines settled by the decisions of the Court and the authority has, without analyzing the provisions of the settlement with regard to the scheme which prescribes formula for calculating productivity and productivity linked earning merely observed that, "in the instance case, it has emerged that incentives have been paid by the establishment to ensure standard level of production." The authority has applied his own test namely, "wherever workers produce less or equivalent to base or standard level, whatever they earn, would be basic wage."

However, the issue viz. whether the requirements for a genuine production bonus scheme exists in the scheme under consideration or not, is not analyzed and identified or answered by the authority.

11.2 Even actual effect of clause No.4.1 and actual implementation of the said clause No.4.1 are not examined by the APFC.

11.3 Besides this, when the order dated 15.12.2010 passed by the learned Tribunal is taken into account, it is noticed that the said order is even more casual than the order of APFC. The learned Tribunal has not discussed any aspect with regard to the production bonus.

11.4 The petitioner has assailed the order on the ground that the authorities have not followed the acknowledged principle of universality. However, on examination of the decision by Hon'ble Apex Court, it has emerged that universality is not the only factor which is to be taken into account and there are other considerations and standards which should be applied while deciding as to whether the payment made in the name and style of production bonus or incentive bonus is not "basic wages" but it is genuinely amount paid for extra labour and extra output over and above the normal standard of output or the base standard.

11.5 In this context, it is relevant to take into account the submission of the petitioner company in ground 14(e) where the petitioner has submitted and claimed that:-

"14(e) That the learned Appellate Tribunal ought to have appreciated that the contention of the petitioner that incentive is paid to the employees in terms of Scheme framed on 1.7.1995 after discussion with the union under Section 2(p) and 18(a)(1) of the Industrial Disputes Act, 1947. the petitioner has also clarify that the objective of giving this benefits is to ensure achievement of the base level of production or to ensure standard level of production and in the event of production falling short of standard level of production the equal level amount are deducted from each and every employee/officer and also addresses Customer complaints & Quality parameters and Scrap rejection ration part of Production incentive and therefore, it cannot form a part of basic wages...."

11.6 It is claimed by the petitioner that the object of introduction of the scheme "is to ensure achievement of best level of production or to ensure standard level of production". However, on prima facie reading the scheme it appears that according to the provision if production fall short of standard level of production then equal amount may be deducted from each and every employee. The effect of the said provision and whether the said provision operates in consonance with the principle

of universality or not, and whether the provision to deduct "equal level amount from each employee" will actually tantamount to action against below par production or not, is not examined by the learned Tribunal and the APFC. The said aspects can be and could have been fully and effectively examined by studying actual implementation of the scheme and its various provision in varied but actual situation and by inviting evidence for that purpose, more particularly evidence of the workmen.

[12] However, such process does not appear to have been undertaken. Whether any material or data which would clarify the said aspects was placed on record of the APFC and the learned Tribunal, does not come out clearly since there is no discussion in the order of APFC or in the order of learned Tribunal.

12.1 In this context, it is relevant to turn to the decision by Hon'ble Apex Court in case of Jay Engineering Works Ltd. & Ors. v. Union of India & Ors., 1963 AIR(SC) 1480. In the said decision, the Court examined the scheme of production/incentive or bonus which prescribed minimum "norm" and the "quota". According to the scheme, quota was lower than the norm and the workmen were expected to give the norm as the minimum production. In the said decision after detailed examination of the scheme and the differentiation between the norm and the quota, Hon'ble Apex Court reached to the conclusion that the payment made in respect of the production above norm can be considered as production bonus, however, the payment made in respect of the production upto the level of quota as well as from the level of quota upto the level of norm would be considered basic wage. The details of the scheme are summarized by Apex Court in paragraph Nos.2 and 3 of the judgment, which reads thus:-

"2. It appears that some kind of production bonus scheme was started in the petitioner company in 1947 and that scheme is said to have been more or less on a straight piece-rate system. Then came the major engineering awards in the years 1948,1950 and 1958, fixing basic minimum wages and its dearness allowance. This was followed by an agreement between the petitioner-company and its workmen in August 1958 in which the present Scheme in force was established even though some kind of production bonus on a more or less straight piece-rate system was in force from as far back as 1947. The scheme which was established by the agreement of 1958 was this. A certain proportion of the production was taken to correspond to the minimum basic wages and dearness allowance fixed by the awards, and this was termed as "Quota". The production above the quota was paid for at piece-rate. But there was a "norm" also fixed which was much higher than the "quota" and every workman was normally expected to produce the "norm" as the minimum production. If the workman did not produce the "norm", he would be

guilty of misconduct and would be liable to dismissal, as the agreement provided that any deliberate deviation from production norms would amount to go slow tactics. The standing orders of the course provide that go- slow tactics would amount to misconduct and may lead to dismissal of workman concerned.

3. It will be seen therefore that the peculiar feature of the production bonus scheme in force in the petitionercompany is that it has got two bases namely, (i) the quota, and (ii) the norm, the quota being much lower than the norm. In view of the agreement between the parties and the precise definition of "go- slow " contained in that agreement, it is clear that workmen are expected to give the "norm" as the minimum production and if there is any deliberate deviation therefrom they are liable to be charged with misconduct in the shape of go-slow and may be dismissed for such misconduct. the minimum wages and the dearness allowance fixed by the major engineering awards are payable for production up to the quota and thereafter extra payments are made on piece-rate basis up to the norm and even beyond it where the workmen produce beyond the norm, The question that fails for consideration is whether such a system is typical production bonus system described in the case, of Bridge and Roof Company, 1963 AIR(SC) 1474"

12.2 In the said decision, Hon'ble Apex Court observed that the cases where base or standard is determined, then, the extra payment made for extra production should be in addition to the basic wages which are paid for production upto the base or standard and it should emerge from actual implementation that the extra payment is made for extra labour and extra output.

12.3 However, neither the APFC's order nor learned Tribunal's order deal with relevant aspects of the scheme and its actual implementation.

12.4 Most importantly, the effect of clause No.4.1 in its actual implementation qua each employees is not examined by APFC or the learned Tribunal. The orders impugned in the petition do not address and do not deal with relevant aspects of the scheme and/or the issues which arise from the provisions of the scheme.

[13] From impugned orders, it also does not come out as to whether the company had placed relevant material on record before the APFC which would have enabled the APFC to examine the said aspect and to arrive at proper and correct conclusion as to whether the scheme provides for genuine incentive for better production and whether genuine extra output is rewarded under the scheme or by virtue of the formula prescribed under the scheme or not. These aspects are not addressed and dealt with by APFC or the Tribunal.

[14] For the aforesaid reasons, the orders which are impugned in present petition are found defective.

[15] There is one more perspective which, though warranted consideration, has not been considered by the APFC or learned Tribunal viz. the petitioners' claim that more than 90% of the concerned workers are excluded employees in light of the wages drawn by / paid to them. According to the company the wages of the concerned employees are more than prescribed limited of Rs.6500/- and that therefore the said employees are excluded employees and the authority would not have jurisdiction to raise demand and / or to initiate and conduct proceeding under Section 7A of the Act in respect of the said employees.

15.1 It is also claimed by the company that despite this position the authority initiated and conducted the proceedings even in respect of excluded employees and the objection raised by the company is ignored.

15.2 On examination of the award passed by the respondent APFC as well as from the order passed by the learned Tribunal it comes out that neither the APFC nor learned tribunal have considered and dealt with said submissions. Therefore, on this count also impugned orders are defective.

15.3 The authorities ought to have examined as to whether the employees in respect of whose the proceedings are initiated are employees within the purview of the term "employee" and within the purview of the Act or they are, in light of the rate of their salary, excluded employees.

15.4 Without first examining said issue the proceedings could not have been continued and decided. Even for the purpose of enabling the authority to examine this issue in light of pay scales of the employees and the wage registers / slips of the employees for the relevant period and to enable the officer to determine factual aspect i.e. whether at the relevant time and presently wages of the concerned workers are more than pecuniary limit prescribed by the Act, the matter is required to be remanded.

15.5 In light of the foregoing discussion and for the reasons mentioned above the petition is partly allowed and impugned orders are set-aside and the proceedings are remanded to the RPFC.

15.6 Ordinarily the Court would remand the proceedings to learned Tribunal however, considering the fact that there is inherent lacuna in the matter inasmuch as RPFC has not invited and considered sufficient and relevant evidence nor the company also led any evidence before RPFC during proceedings of Section 7A, the

learned Tribunal would have handicapped in deciding the matter on merit for want of cogent and sufficient evidence.

[16] In this view of the matter proceedings are remanded to the first adjudicating authority where department as well as company can get opportunity to lead evidence and RPFC may be able to decide the proceedings in light of appropriate evidence. Consequently, the proceedings are remanded to the RPFC for fresh order on merits after taking into account decisions by Hon'ble Apex Court in case of Jay Engineering and Bridge and Roof Company and the decision in case of Daily Partap and other judicial precedent which may be relied on by the department and the company.

With the aforesaid clarifications and direction, the petition stands disposed of.