

**HIGH COURT OF MADHYA PRADESH, BENCH AT
GWALIOR.**

REVIEW PETITION NO. 117 OF 2011.

Surya Roshni Limited.

vs.

Employees Provident Fund and another.

**DB : HON'BLE SHRI S.K.GANGELE &
HON'BLE SHRI BRIJ KISHORE DUBE , JJ.**

Shri Rajendra Tiwari, Senior Advocate, with Shri Prashant Sharma,
Advocate, for petitioner.

Shri S.L. Gupta, Advocate, and Shri R.K. Goyal, Advocate, for
respondents.

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Whether approved for Reporting :
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ORDER.

(Passed on this day of November, 2011)

Per S.K. Gangele, J. -

1. This review petition has been filed for review of the order dated 24.03.2011 passed by this Court in Writ Petition No. 1891/2011.

2. A notice was issued by the Assistant Provident Fund Commissioner to the petitioner under Section 7-A of the Employees' Provident Fund and miscellaneous Provisions Act, 1952, hereinafter referred to as the 'Act of 1952'. The Assistant Provident Fund Commissioner noticed the fact that the petitioner – company had been paying less amount towards contribution of Provident Fund and it had bifurcated the salary of employees in order to avoid the liability of payment of provident fund contribution. The notice was issued on the basis of a report submitted by the

Enforcement Officer. The main contention was that the petitioner – company had been paying special allowance, dearness allowance, conveyance allowance and other allowances, however, those allowances were part and parcel of basic wage.

3. The petitioner-company contested the case before the Authority. The Authority vide final order assessed the liability of the petitioner. Against the aforesaid order, petitioner preferred an appeal. That appeal has been dismissed. Thereafter, a writ petition was filed before this Court. This Court has upheld the orders passed by the Authority as well as the Assessing Authority with certain variations.

4. Learned Senior Counsel appearing on behalf of the petitioner has contended this Court committed an error of law in holding that conveyance allowance i.e. transport allowance and other allowances except the lunch allowance, are part and parcel of basic wages. The learned Senior Counsel further submitted that the allowance have not been paid universally to all the employees and no reasons have been assigned by this Court to hold that these allowances are part and parcel of the basic wage, hence, the order is liable to be reviewed. In support of his contentions, learned Counsel relied on the following judgments :-

- (1) ***Parsion Devi and others vs. Sumitri Devi and others***, (1997) 8 SCC 715;
- (2) ***M/s Thungabhadra Industries Ltd. v. The Government of Andhra Pradesh***, AIR 1964 SC 1372;
- (3) ***Meera Bhanja (Smt.) vs. Nirmala Kumari Choudhury (Smt.)***, (1995) 1 SCC 170; and
- (4) ***Dr. Janak Rajjai Vs. H.D. Deve Gowda***,

(1997) 10 SCC 462.

5. In the final order passed by the Authority it has clearly been observed that the special allowance has been given to all the employees. The conveyance allowance has also been given to all the employees. The management put forth the argument before the Authority that the conveyance allowance was paid to the employees to defray the expenses incurred by the employees coming to the establishment from home and return. Washing allowance was also paid to all the employees. Canteen allowance was also paid to all the employees. The petitioner filed its written submissions and the reply before the Assistant Provident Fund Commissioner. In the aforesaid documents the petitioner did not plead the fact that the aforesaid allowances were not paid to all the employees. An appeal was filed against the order of the Assistant Commissioner, Provident Fund. In the appeal also it was not pleaded. Similarly, thereafter a writ petition was filed. In the writ petition also this fact was not controverted that these allowances were not paid to all the employees.

6. Along with the review petition, the petitioner has filed certain documents and contended that the allowances were not paid to all the employees. However, from perusal of the documents, in our opinion, the contention raised by the petitioner could not be accepted. Apart from this, these points have not been raised before the original Authorities. It is also a fact that this Court has considered the judgment of Hon'ble the Supreme Court and after considering the judgments in regard to liability of payment of provident fund of employees this Court has passed the order.

7. Basic principle of review is that there must be an error apparent on the face of record. The review is not a

substitute of regular appeal. It is also a fact when the findings have been affirmed by the Appellate Authority , then it is not necessary for writ Court to give detailed reasons or analyze the findings of facts recorded by the lower Tribunal or quasi judicial authority.

8. Looking to the aforesaid facts of the case, in our opinion, there is no error apparent on the face of record. Hence, we do not find any merit in this review petition. It is hereby dismissed.

(S.K.Gangele)
Judge
(__.11.2011).

(Brij Kishore Dube)
Judge
(__.11.2011).