C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 2ND DAY OF NOVEMBER 2022 / 11TH KARTHIKA, 1944

WP(C) NO. 15764 OF 2011

PETITIONERS:

MANGALAM PUBLICATIONS (INDIA) PVT.LTD, MANGALAM COMPLEX,
P.B.NO.3,, S.H.MOUNT P.O., KOTTAYAM-6,
REPRESENTED BY ITS DIRECTOR SABU VARGHESE

BY ADVS.
SRI.E.K.MADHAVAN
SRI.U.K.DEVIDAS
SRI.V.KRISHNA MENON
SRI.PRINSUN PHILIP
SMT.P.VIJAYAMMA

RESPONDENTS:

1 THE EMPLOYEES PROVIDENT FUND
APPELLATE TRIBUNAL, SCOPE MINAR,, CORE-II, 4TH FLOOR,
LAXMI NAGAR DISTRICT CENTRE, NEW DELHI-110 092.

2 THE REGIONAL PROVIDENT FUND
COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANIZATION, SUB
REGIONAL OFFICE, KOTTAYAM-1.

3 THE ASSISTANT PROVIDENT FUND
COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANIZATION, SUB
REGIONAL OFFICE, KOTTAYAM-1.

4 SUNNY THOMAS
KARUVAKUNNEL HOUSE, AMALAGIRI, P.O.KOTTAYAM-36.

5 K.M.BABU, KAYATHIL PARAMBIL,
KUMARANALLOOR P.O., KOTTAYAM-4.

BY ADVS.
SRI.SHERRY J. THOMAS
SRI.JOY THATTIL ITOOP, SC, (EPF)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.10.2022, THE COURT ON 2.11.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 2ND DAY OF NOVEMBER 2022 / 11TH KARTHIKA, 1944

WP(C) NO. 34720 OF 2010

PETITIONER:

MANGALAM PUBLICATIONS (INDIA) PVT.LTD.
S.H.MOUNT P.O., KOTTAYAM-6, REPRESENTED BY ITS DIRECTOR.

BY ADVS.
SMT.P.VIJAYAMMA
SRI.U.K.DEVIDAS
SRI.V.KRISHNA MENON
SRI.PRINSUN PHILIP

RESPONDENTS:

1 THE EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, 60, SKY PARK BUILDING,, 7TH FLOOR, NEHRU PALACE, NEW DELHI.(NAME OF R1 IS DELETED FROM THE ARRAY OF PARTIES AS PER ORDER DATED 01/03/2012 IN WP(C) 34720/2010.

2 THE ASST.PROVIDENT FUND COMMISSIONER EMPLOYEES PROVIDENT FUND ORGANIZATION,, SUB REGIONAL OFFICE, CHALAKUZHY BUILDING, C.M.S.COLLEGE ROAD, KOTTAYAM-1.

3 THE RECOVERY OFFICER EMPLOYEES PROVIDENT FUND ORGANIZATION,, SUB REGIONAL OFFICE, KOTTAYAM-1.

BY ADV SRI.JOY THATTIL ITTOOP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.10.2022, THE COURT ON 2.11.2022 DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

W.P.(C).Nos.34720 of 2010 & 15764 of 2011

Dated this the 2nd day of November, 2022

JUDGMENT

These two writ petitions are connected; therefore, I am disposing of these writ petitions by a common judgment. These writ petitions are filed by Mangalam Publications (India) Private Limited.

2. First, I will narrate the facts in W.P.(C). No.34720/2010. Petitioner is a company registered under the Companies Act, 2013 engaged in the business of printing and publishing newspapers and other periodicals. The petitioner's establishment is a covered establishment under The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, Act, 1952). The MCM Press, Kottayam, even after its takeover by the petitioner, was continuing under separate Code No.KR/5973 till March, 2003. The Code Number allotted to the petitioner in respect of its other employees was KR/5975. According to the petitioner, they are paying PF contributions for all its eligible employees, including employees covered under Code No.KR/5973 and under Code No.KR/5975 after March, 2003.

3. After constituting the Manisana Wage Board, the Central Government issued two notifications dated 24.9.1996; one was providing interim relief to the working journalists and the other to the non-journalists, newspaper employees and news agency employees. According to the petitioner, since the interim relief does not constitute the 'basic wage' as defined under the Act, 1952, the petitioner did not pay P.F. contributions on the interim relief paid in respect of its employees including the employees covered under Code No.KR/5973. Immediately after the notification dated 24.9.1996 issued by the Central Government, newspaper establishments sought the assistance of the Indian Newspaper Society to get clarification from the Central Government regarding the consequential benefits such as provident fund, bonus etc. on the interim reliefs. It is the case of the petitioner that by quoting a letter dated 17.12.1996 of the Ministry of Labour, Government of India, the Indian Newspaper Society as per its letter dated 20.12.1996, informed that the consequential benefits such as provident fund, bonus etc. are not payable on interim reliefs. In the meanwhile, the Assistant Provident Fund Commissioner, the 2nd respondent herein, initiated action for recovery of P.F. contributions on the interim relief paid in respect of the employees of the petitioner who are covered under Code No.KR/5973

and KR/5975 by invoking Section 7-A of the Act, 1952. Two enquiries were started. The enquiry under Section 7-A relating to interim relief paid to the employees covered under Code No.KR/5975 was taken up first. The petitioner objected to the assessment of the P.F. contributions on the interim relief. The 2nd respondent passed an order holding that the interim relief would constitute basic wages under the Act, 1952, and directed the petitioner to pay P.F. contribution of Rs.6,76,086.85 on the interim relief paid to the employees of the petitioner covered under Code No.KR/5975. It is submitted that against the said order of the 2nd respondent, the petitioner has filed an appeal before the 1st respondent, The Employees Provident Fund Appellate Tribunal under Section 7-I of the Act, 1952. The 2nd respondent also took up Section 7-A enquiry relating to the interim relief paid to the employees under Code No.KR/5973. It is the case of the petitioner that they had submitted their objections in this matter *inter alia* contending that the interim relief will not constitute 'basic wages' as defined under the Act, 1952. According to the petitioner, without considering their contentions, the 2nd respondent assessed P.F contributions on the interim relief paid to the employees covered by KR/5973 and fixed a contribution of Rs.1,30,132.25 as per order dated 23.3.2004. Ext.P1 is the order. It is the case of the petitioner

that the petitioner and the trade union representing the employees of the petitioner had signed a conciliation settlement dated 27.06.2001 regarding the Manisana Wage Award. It is submitted that Ext.P2 conciliation settlement is applicable to the employees of the petitioner covered under Code No.KR/5973 and KR/5975. The petitioner challenged Ext.P1 order of the 2nd respondent by filing an appeal before the 1st respondent under Section 7-I of the Act, 1952. Ext.P3 is the appeal memorandum. The petitioner had also filed a petition before the 1st respondent for waiving the deposit of 75% of the amount of Rs.1,30,132.25 under the proviso to Rule 7(3) of The Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, with an affidavit. Meanwhile, the 2nd respondent passed orders under Section 8-F of the Act, 1952 requiring the Managers of South Indian Bank, Kottayam and State Bank of Travancore, Main Branch, Kottayam to pay the sum of Rs.1,30,132.25 out of the money in the account of the petitioner in the said Banks. Aggrieved by the above orders of the 2nd respondent, the petitioner approached this Court by filing W.P.(C). No.13635 of 2004. This Court was pleased to stay the recovery proceedings on condition that the petitioner pays an amount of Rs.25,000/-. The petitioner complied with the condition and subsequently, as per Ext.P4 judgment, this Court was

pleased to extend the interim order of stay of recovery till the disposal of Ext.P3 appeal by the 1st respondent. Thereafter, the 1st respondent considered the appeal and dismissed the same as per Ext.P5 order. Consequent to Ext.P5, Ext.P6 proceedings was issued by the 3rd respondent, the recovery officer. Aggrieved by Exts.P1, P5 and P6, W.P.(C). No.34720/2010 is filed.

4. W.P.(C). No.15764/2011 was filed by the same petitioner as in W.P.(C). No.34720/2010. W.P.(C). No. 15764/2011 is filed challenging Exts.P1, P2 and P13 produced in this writ petition. Ext.P1 is the order passed by the 3rd respondent, The Assistant Provident Fund Commissioner, under Section 7-A of the Act, 1952 as far as Code No.KR/5975 is concerned. Ext.P2 is the order passed by the 3rd respondent in a review petition filed by the petitioner in Ext.P1 proceedings. Ext.P13 is the order passed by The Employees' Provident Fund Appellate Tribunal rejecting the appeal and confirming the proceedings under Section 7-A of the Act, 1952 as far as Code No.KR/5975 is concerned, which is impugned in W.P.(C). No.15764/2011. The other details mentioned in the above writ petition are not necessary for the disposal of this case because those are proceedings pending the appeal and such other proceedings.

5. Heard Adv. Krishna Menon, the learned counsel for the petitioner and Adv. Joy Thattil Ittoop, the learned Standing Counsel, who appeared for the EPF Authorities.

6. The counsel for the petitioner submitted that the interim relief granted to the workers by the petitioner would not come within the purview of basic wages as defined under Section 2(b) of the Act, 1952. The counsel also submitted that as evident by Ext.P2 in W.P.(C). No.34720/2010, the interim relief was disbursed to the workers based on a settlement. In the final conciliation conference held on 27.06.2001 in the presence of the petitioner and their employees represented by their union, the dispute is settled and in the terms of settlement, it is clearly stated that, both parties agreed that the adhoc payment already paid as interim relief will be treated as non-recoverable advance. Under such circumstances there cannot be any direction to pay the PF contribution against a statutory settlement arrived at between the parties, as evident by Ext.P2 is the contention.

7. The counsel for the petitioner also relied on the judgment of the Madras High Court in ***Thiru Arooran Sugars Ltd. and Five Others*** *v.* ***Asstt. Provident Fund Commissioner (ENF) Employees' Provident Funds Organisation, Trichirapalli and Another.*** [2008

ILLJ 806 (Mad)] to contend that the interim relief will not come within the purview of the definition of basic wages. The counsel also relied on the judgment of the Madras High Court in ***E.I.D Parry (India) Ltd. v. Regional Commissioner EPF Tamilnadu and anr.*** [1984 ILLJ 300 Mad] to contend that the basic wages defined in the Act, 1952 is not the interim relief granted to the workers. The counsel for the petitioner also relied on a judgment of this Court in W.P.(C.) No. 10837/2011 in which this Court observed that in view of any settlement arrived between the employer and the employee during the conciliation proceedings should be recognized for the purpose of the Act,1952.

8. The learned Standing Counsel appearing for the EPF authorities relied on the judgment of the Apex Court in ***Employees' State Insurance Corpn.*** *v.* ***Gnanambigai Mills Ltd.*** [2005 (6) SCC 67] and the judgment in ***Employees' State Insurance Corporation and Another*** *v.* ***Mangalam Publications (I) Private Limited*** [2018 (11) SCC 438]. The counsel submitted that the wages defined in The Employees State Insurance Act, 1948 is pari materia to the definition of the basic wages in the Act, 1952. The counsel submitted that the Apex Court in ***Mangalam Publications's*** case (supra) which was a case in which the petitioner herein was a party held that the interim relief will

come within the purview of the definition of 'Wages' as defined in Sec.2(22) of the ESI Act, 1948. The same principle is applicable in this case also, was the contention. The counsel also relied on the dictum laid down by the Apex Court in ***Gnanambigai Mills Ltd.'s*** case (supra), in which the Apex Court observed that the “ex-gratia payments” does not mean that those payments ceases to be wages if they were otherwise wages and they do not cease to be wages after the award merely because of the terms of compromise termed them as “ex-gratia payments”.

9. This Court considered the contentions of the petitioner and the respondents. There is no dispute that the Act, 1952 is a beneficial piece of legislation. The statement of objects and reasons of the Act, 1952 starts as follows:

> *“The question of making some provision for the future of the industrial worker after he retires or for his dependents in case of his early death, has been under consideration for some years. The ideal way would have been provisions through old age and survivors' pensions as has been done in the industrially advanced countries. But in the prevailing conditions in India, the institution of a Pension Scheme cannot be visualised in the near future. Another alternative may be for provision of gratuities after a prescribed period of service. The main defect of a gratuity scheme, however, is that amount paid to a worker or his dependents would be small, as the worker would not himself be making any contribution to the fund. Taking into account the various difficulties, financial and administrative, the most appropriate course appears to be the institution compulsorily of contributory Provident Funds in which both the worker and the employer would*

contribute. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly. The institution of a Provident Fund of this type would also encourage the stabilisation of a steady labour force in industrial centres……."

10. From the above, it is clear that the Act, 1952 is a beneficial piece of legislation for the working class of the country. If two interpretations are possible in a beneficial legislation, it is a settled law that the court should lean in favour of the interpretation which is beneficial to the subject under such welfare legislation. Therefore, if two interpretations are possible while interpreting a provision in the Act, 1952, the Court will always lean in favour of the interpretation which is beneficial to the working class.

11. The short point to be decided in this case is whether the interim relief granted by the petitioner to the workers amounts to basic wages as defined in Section 2(b) of the Act, 1952. The interim relief paid by the petitioner to the workers is 20% of their basic wages. There is no dispute about that. According to the petitioner, this will not come within the purview of Section 2(b) of the Act, 1952. Under such circumstances, it will be better to extract Section 2(b) of the Act, 1952.

"(b) "basic wages" means all emoluments which are earned by an employee while on duty or 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;"

12. The classic and celebrated decision interpreting Sec.2(b) of the Act, 1952 is the constitutional bench decision of the Apex Court in **M/s *Bridge and Roofs Co. Ltd.*** v. ***Union of India and Others*** [AIR 1963 SC 1474]. It will be better to extract the relevant portion of the above judgment.

3. "We may now briefly refer to the relevant provision of the Act which require consideration. The Act provides by S.5 for the introduction of the Employees Provident Fund Schemes for certain industries included in Sch. I to the Act, In consequence a Provident Fund Scheme was framed in September 1952 known as the Employees Provident Fund Schemes, 1952, and it is applicable to the Company. S.6 of the Act provides for contribution by the Employer and Employee to the Provident Fund and that contribution is 6 1/4 percentum of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable in the case of the both. S.6 further provides for certain increased contribution; but we are not concerned with that in the present case. "Basic wages" have been defined in S.2 (b) of the Act thus :

"Basic wages" means all emoluments which are earned by an employee

while on duty or on leave with wages in accordance with the term 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 allowances, overtime alliances, bonus, commission or any other similar allowance payable to the employee in respect of his employment or work done, in such employment;
(iii) any present made by the employer;" Further, S.19A of the Act provides for the removal of difficulties and lays down that if any difficulty arises in giving effect to the provisions of the Act, and in particular, if any doubt arises as to certain matters including "whether the total quantum of benefits to which an employee is entitled has been reduced by the employer" the Central Government may by order, make such provision or give such direction, not inconsistent with the provision of the Act, as appears to it to be necessary or expedient for the removal of the doubt or difficulty, and the order of the Central Government in such cases shall be final.

7. The main question therefore that falls for decision is as to which of these two rival contention is in consonance with S.2 (b). There is no doubt that "basic wages" as defined therein means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash. If there were no exception to this definition, there would have been no difficulty in holding that production bonus whatever be its nature would be included within this terms, the difficulty, however arises because the definition also provides that certain things will not be included in terms "basic wages", and these are contained in three clauses. the first clause mentions the cash value of any food concession while the

third clause mentions any present made by the employer. The fact that the exception contains even presents made by the employer shows that though the definition mentions all emoluments which are earned in accordance with the terms of the contract of employment, care was taken to exclude presents which would ordinarily not be earned in accordance with the terms of the contract of employment. Similarly though the definition includes "all emoluments" which are paid or payable in cash, the exception excludes the cash value of any food concession, which any case was not payable in cash. The exceptions therefore do not seen to follow any logical pattern which would be in consonance with the main definition.

8. Then we come to cl. (ii). It excludes dearness allowance, house rent allowance, overtime allowance, bonus commission or any other similar allowances payable to the employee in respect of this employment or of work done in such employment. This exception suggests that even though the main part of the definition includes all emoluments which are earned in accordance with the terms of the contract of the employment, certain payments which are in fact the price of the labour and earned in accordance with the terms of the contract of employment are excluded from the main part of the definition of "basic wages". It is undeniable that the exception contained in cl. (ii) refer to payments which are earned by an employee in accordance with the terms of this contract of employment. It was admitted by counsel on both side before us that it was difficult to find any one basis for the exceptions contained in the three clauses. It is clear however from cl. (ii) that from the definition of the word "basic wages" certain earnings were excluded, though they must be earned by the employees in accordance with the terms of the contract of employment. Having excluded "dearness allowances" from the definition of "basic wages", S.6 then provides for inclusion of dearness allowances for purposes of contribution. But that is clearly the result of the specific provision in S.6 which lays down that contribution shall be 6 1/4 per centum of the basic wages, dearness allowances and retaining allowances

(if any). We must therefore try to discover some basis for the exclusion in cl (ii) as also the inclusion of dearness allowance and retaining allowances (if any) in S.6. It seems that the basis of inclusion in S.6 and exclusion in cl. (ii) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose of contribution under S.6 but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purposes of contribution. Dearness allowance (for example) is payable in all concerns either as an addition to basic wages or as a part of Consolidated wages where a concern does not have separate dearness allowance and basic wages. Similarly retaining allowance is payable to all permanent employees in all seasonal factories like sugar factories and is therefore included in S.6; but house rent allowance is not paid in many concerns and sometimes in the same concern it is paid to some employees but not to others, for the theory is that house rent is included in the payment of basic wages plus dearness allowance or consolidated wages. Therefore, house rent allowance which may not be payable to all employees of a concern and which is certainly not paid by all concerns is taken out of the definition of "basic wages" even though the basis of payment of house rent allowance where it is paid is the contract of employment. Similarly, 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". Similarly, commission or any other similar allowances is excluded from the definition of "basic wages" for commission and other allowances are not necessarily to be found in all concerns, nor are they necessarily earned by all employees of the same concern, though where they exist they are earned in accordance with the terms of the contract of employment. It seems therefore, that the basis for the exclusion in cl.(ii) of the exceptions in S.2(b) is that all that is not earned in all concerns or by all employees of a concern is excluded from

basic wages. To this, the exclusion of dearness allowance in cl. (ii) is an exception. But that exception has been corrected by including dearness allowance in S.6 for the purpose of contribution. Dearness allowance which is an exception in the definition of "basic wages", is included for the purpose of contribution by S.6 and the real exceptions therefore in cl. (ii) are the other exceptions beside dearness allowances, which has been included through S.6. ” (underline supplied)

13. Almost all the subsequent decisions on this issue are relying the dictum laid down by the Apex Court in **M/s *Bridge and Roofs*** case (supra). From a reading of the above decision, it is clear that the basis of the inclusion of dearness allowance in Sec.6 of the Act, 1952 and exclusion of the same in Clause (ii) of Sec. 2(b) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose of contribution under Section 6. 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.

14. In **Regional Provident Fund Commissioner (II) West Bangal v. Vivekananda Vidyamandir and Others** (**2020 (17) SCC 643)**, the Apex Court considered the definition of basic wages once again by relying on the judgment in M/S Bridge and Roofs’ case (Supra).

15. In **Kichha Sugar Company Ltd. Th. Gen. Mang. v. Tarai**

Chini Mill Majdoor Union, Uttarkhand (**2014 (4) SCC 37)**, the Apex Court considered the definition of basic wages in paragraph 8 to 11, and the same is also extracted hereunder.

> *"8. In view of the rival submissions, the question which falls for our determination is as to the meaning of the expression 'basic wage'. The expression 'basic wage' has not been explained by the Government in the order granting Hill Development Allowance. It has been defined only under S.2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Therefore, we have to see what meaning is to be given to this expression in the present context. S.2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 defines 'basic wages' as follows:*
>
> *"2. Definitions. -- In this Act, unless the context otherwise requires, -*
>
> *(a) xxxx xxxx xxxx*
>
> *(b) "basic wages" means all emoluments which are earned by an employee while on duty or 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;"*

9. According to http: / / www.merriam - webster.com (Merriam Webster Dictionary) the word 'basic wage' means as follows:

"1. A wage or salary based on the cost of living and used as a standard for calculating rates of pay v. A rate of pay for a standard work period exclusive of such additional payments as bonuses and overtime."

10. When an expression is not defined, one can take into account the definition given to such expression in a statute as also the dictionary meaning. In our opinion, those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage. Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage. As for example, the overtime allowance, though it is generally enforced across the board but not earned by all employees equally. Overtime wages or for that matter, leave encashment may be available to each workman but it may vary from one workman to other. The extra bonus depends upon the extra hour of work done by the workman whereas leave encashment shall depend upon the number of days of leave available to workman. Both are variable. In view of what we have observed above, we are of the opinion that the amount received as leave encashment and overtime wages is not fit to be included for calculating 15% of the Hill Development Allowance. The view which we have taken finds support from the judgment of this Court in Muir Mills Co. Ltd. (supra), relied on by the appellant, in which it has been specifically held that the basic wage shall not include bonus.

11. It also finds support from a judgment of this Court in the case of Manipal Academy of Higher Education v. Provident Fund Commr., 2008 (5) SCC 428 in which it has been held as follows:

"10. The basic principles as laid down in Bridge & Roofs case, AIR 1963 SC 1474, on a combined reading of S.2(b) and S.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.

(c) Conversely, any payment by way of a special incentive or work is not basic wages."

16. From the above decisions and in the light of the dictum laid down by the Apex Court in **M/s *Bridge and Roofs*'** case (supra), the following principle can be drawn.

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

(ii) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages.

(iii) Any payment by way of special incentives or work is not basic wage.

17. In this case, it is an admitted fact that 20% of the wages are

paid as interim relief to all the employees. At no stretch of the imagination, this Court can conclude that this will come within the purview of Section 2(b)(ii) of the Act, 1952. The attempt of the counsel for the petitioner was to see that the interim relief granted to the petitioner would come within the purview of Section 2(b) (ii) of the Act, 1952. Section 2(b)(ii) of the Act, 1952 is one of the exceptions carved out from the definition of basic wages. It states that 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 work done in such employment. The important words in Section 2(b) (ii) of the Act, 1952 are: *"any other similar allowances payable to the employee in respect of his employment or of work done in such employment."* The word similar is used because it prefixes the dearness allowance, house-rent allowance, overtime allowance, bonus and commission. In the light of the above explanation, it is clear that only allowances which are connected to or similar to dearness allowance, house-rent allowance, overtime allowance, bonus and commission will come within the purview of Section 2(b)(ii) of the Act, 1952.

18. In ***Maharashtra University of Health Sciences and Others v. Satchikitsa Prasarak Mandal and Others*** **[2010 (3) SCC 786]**, the Apex Court considered the Latin expression "*Ejusdem generis*". It will be better to extract the relevant portion of the above judgment.

> *27. This ejusdem generis principle is a facet of the principle of Noscitur a sociis. The Latin maxim Noscitur a sociis contemplates that a statutory term is recognised by its associated words. The Latin word 'sociis' means 'society'. Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context [See similar observations of Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover, 1957 AC 436 at 461 of the report]*

19. *Ejusdem generis* means that the general words following certain specific words would take colour from the specific words. In other words, when general words in a statutory text are flanked by restricted words, the meaning of the general words is to be restricted by implication with the meaning of the restricted words. This is the principle that arises from "the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated so as to reduce its scope by verbal context".

20. As far as Section 2(b)(ii) of the Act, 1952 is concerned, since the word similar is used after dearness allowance, house rent allowance,

overtime allowance, bonus and commission, the other similar allowances have got a restricted meaning connected to dearness allowance, house-rent allowance, overtime allowance, bonus and commission. In this case, admittedly the interim relief granted to the workers are 20% of the wages of the workers. Under such circumstances, the only conclusion that can be arrived at, is that the interim relief disbursed by the petitioner will come within the purview of the definition of basic wages as mentioned in Section 2(b) of the Act, 1952.

21. The counsel for the petitioner relied on the judgment of the Madras High Court to contend that the interim relief is not basic wages as defined in Section 2(b) (ii) of the Act, 1952. ***Thiru Arooran Sugars Ltd.*** case (Supra) relied on by the learned counsel for the petitioner is not applicable to the facts and circumstances of this case. The question that arose for consideration in that case is whether the contribution for leave encashment expenditure is covered within the definition of basic wages. Here, 20% of the wages itself is given as interim relief. Therefore, the principle laid down by the Madras High Court in ***Thiru Arooran Sugars Ltd.*** case (Supra) is not applicable. The next decision relied on by the counsel is a Division Bench judgment of the Madras High Court in ***E.I.D. Parry (India) Ltd*** (Supra). That was also a case in which the

question was regarding the adhoc allowances and whether such an allowance can be treated as forming a part of the character of basic wages. There may not be any dispute on that also. That decision of the Madras High Court is also not applicable to the facts and circumstances of this case.

22. The Apex Court in ***Mangalam Publications (I) Pvt.Ltd.'s*** **c**ase (supra) considered the question of payment of contribution as per The Employees' State Insurance Act, 1948. The petitioner herein is the respondent in that case. The Apex Court considered the definition of wages in Section 2(22) of The Employee's State Insurance Act,1948 and observed that "whatever remuneration is paid or payable to an employee under the terms of the contract of the employment expressed or implied is wages". It will be beneficial to extract the relevant portions of the judgment of the Apex Court in Mangalam Publications (I) Pvt. Ltd. Case (supra)here:

> *"10. As mentioned supra, the High Court while allowing the appeal filed by the respondent has mainly relied upon the office memorandum dated 19.08.1998 issued by the Department of Public Enterprises, Ministry of Industry, New Delhi, which is not applicable to the facts of this case. The said notification makes it abundantly clear that the instructions contained in the said office memorandum are applicable to Central Public Sector Enterprises (PSES) only. Admittedly, the respondent is a private limited*

company and hence the instructions contained in office memorandum dated 19.08.1998 are not applicable to the respondent company. In the matter on hand, the appellant claimed ESI contribution only on the amount paid by the respondent as interim relief to its employees, treating the same as "wages" as per S.2(22) of the ESI Act. The amount paid as interim relief by the respondent to its employees definitely falls within the definition of "wages" as per S.2(22) of the ESI Act. On the other hand, the High Court has strangely observed that the interim relief paid for the period from 01.04.1996 to 31.03.2000 can only be treated as "ex - gratia payment" paid by the employer to its employees and cannot be treated as "wages" for the purpose of ESI contribution. In our considered opinion, the High Court has ignored to *appreciate that the effect of ESI Act enacted by the Parliament cannot be circumvented by the department office memorandum. The High Court has also failed to appreciate that the payment of interim relief / wages emanates from the provisions contained in terms of the settlement, which forms part of the contract of employment and forms the ingredients of "wages" as defined under S.2(22) of the ESI Act and that the respondent paid interim relief, as per a scheme voluntarily promulgated by it as per the notification dated 20.04.1996, issued by the Government of India, in view of the recommendations of "Manisana' Wage Board, pending revision of rates of wages. It was not an ex – gratia payment. In this context, it is beneficial to note the observations of this Court in the case of Employees State Insurance Corporation vs. Gnanambigai Mills Limited, 2005 (6) SCC 67, which read thus:*

"6. In our view the High Court has gone completely wrong in concluding that by virtue of the award it ceases to be wages. As stated above, the Tribunal has not applied its mind as to whether or not the payments were wages. All that the Tribunal did was to give its imprimatur to a compromise between the parties. On 16-09-2022. Merely because the parties in their compromise chose to term the payments as "ex gratia

payments" does not mean that those payments cease to be wages if they were otherwise wages. As stated above, they were wages at the time that they were paid. They did not cease to be wages after the award merely because the terms of compromise termed them as "ex gratia payments". We are therefore unable to accept the reasoning of the judgments of the High Court. The judgment of the Division Bench as well as that of the Single Judge accordingly stands set aside. It is held that the amounts paid are wages and contribution will have to be made on those amounts also. We, however, make it clear that payments of the interest will be as per the statutory provisions."

11. The interim relief paid by the respondent to its employees is not a "gift" or "inam", but is a part of wages, as defined under S.2(22) of the ESI Act. In view of the above, we hold that the payment made by way of interim relief to the employees by the respondent for the period from 1.04.1996 to 31.03.2000 comes within the definition of "wages", as contained in S.2(22) of the ESI Act, and hence the respondent is liable to pay ESI contribution.

12. Accordingly, the instant appeal is allowed, the impugned judgment of the High Court is set aside, and that of the ESI Court is restored. The appellant is held to be entitled to recover the ESI contribution from the respondent for the period from 01.04.1996 to 31.03.2000 as per demand notice dated 02.11.2000. No order as to costs."

23. The counsel for the petitioner also relied on a Division Bench judgment of the Madras High Court in ***Regional Commissioner, EPF,***

Tamil Nadu and Pondicherry v. Management of Southern Alloy Foundation (P) Ltd. [(1982) ILLJ 28 Mad]. In the light of the dictum laid down by the Apex Court in **M/s Bridge and Roofs' case**(supra) and the subsequent judgments of the Apex Court, which is relied on by this Court in this judgment, I am of the opinion that the dictum laid down by the Madras High Court need not be considered in length. Moreover, that was a case in which the question the Madras High Court was considering was whether special allowance will come within the purview of the basic wages.

Therefore, there is no need to interfere with the impugned orders in these writ petitions. The writ petitions are, accordingly, dismissed. No cost.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

JV
SKS
RMV
DAS

WP(C).Nos.34720/2010

APPENDIX

PETITIONER'S EXTS:

EXT P1: COPY OF ORDER DTD 23.3.2004 PASSED BY R2.

EXT P2: COPY OF CANCILLATION SETTLEMENT DTD 27.6.2001

EXT P3: COPY OF APPEAL MEMORANDUM FILED BY THE PETITIONER BEFORE R1

EXT P4: COPY OF JUDGMENT DTD 10.8.2007 IN WP© NO.13635 OF 2004

EXT P5: COPY OF ORDER DTD 23.8.2010 IN APPEAL NO.295(7)2004 PASSED BY R1

EXT P6: COPY OF NOTICE ISSUED BY R3 DTD 1.11.2010

RESPONDENTS EXTS: NIL

TRUE COPY

P.A.TO JUDGE

W.P.(c).No. 15764/2011

APPENDIX

PETITIONER'S EXTS:

EXT P1: COPY OF ORDER DTD 27.4.2001 ISSUED BY R3.
EXT P2: COPY OF ORDER DTD 8.10.2002 ISSUED BY R3.
EXT P3: COPY OF APPEAL DTD 17.2.2003 WITHOUT ANNEXURES.
EXT P4: COPIES OF PETITION AND AFFIDAVIT FOR WAIVER OF PRE-DEPOSIT UNDER PROVISO TO SECTION 7 0 OF THE EPF ACT.
EXT P5:COPY OF PETITION AND SUPPORTING AFFIDAVIT SEEKING STAY OF EXT P1 WHICH WAS EVIDENCED AS ANNEXURE-A1 IN THE APPEAL.

EXT P6:COPY OF JUDGMENT OF THIS COURT IN WP© No.26157/2005 DTD 21.8.2009
EXT P7: COPY OF ORDER OF R1 IN ATA NO.56(7)2003 DTD 4.6.2010

EXT P8:COPY OF REVIEW PETITIONER

EXT P9: COPY OF ORDER OF R1 DTD 10.8.2010

EXT P10: COPY OF NOTICE DTD 30.7.2010 ISSUED BY R2

EXT P11:COPY OF PROCEEDINGS OF R2 DTD 16.8.2010

EXT P12: COPY OF JUDGMENT OF THIS COURT IN WP© NO.27040 OF 2010 DTD 3.9.2010
EXT P13: COPY OF ORDER DTD 28.2.2011 IN APPEAL NO.56(7) 2003 PASSED BY R1.

EXT P14: COPY OF MANISANA SAGE BOARD AWARD

EXT P15: COPY OF CONCILIATION SETTLEMENT DTD 27.6.2001

RESPONDENTS EXTS: NIL

TRUE COPY

P.A TO JUDGE