IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1222/2023

WEST BENGAL SWAROJGAR CORPORATIOIN LIMITED

-VERSUS-

CENTRAL BOARD OF TRUSTEES OF EPFO AND ORS.

Present :

The Hon'ble Justice Shampa Dutt (Paul)

For the Petitioner	:	*Mr. Soumya Majumder, Sr. Adv.* *Mr. Sudarsan Roy, Adv.*
For the Respondent Nos.1 & 2	:	*Mr. Shiv Chandra Prasad, Adv.*
For the Respondent Nos.4 & 5	:	*Mr. Pratik Majumdar, Adv.* *Mr. Snehasish Dey, Adv.*
For the State	:	*Mr. Asim Kumar Ganguly, Adv.* *Ms. Srijani Mukherjee, Adv.*
Hearing concluded on	:	25.06.2026
Delivered on	:	23.07.2026

SHAMPA DUTT (PAUL), J. :-

1. The writ application has been preferred praying for direction upon the respondents not to give effect to the order dated 17.02.2023 passed by the respondent no.2 under para 26B of the EPF Scheme, 1952.

2. By an impugned order dated 17.02.2023, the Regional Provident Fund Commissioner being the respondent no.2 herein, relying upon the

judgment of the Hon'ble Gujarat High Court passed in ***Satish Plastic vs. Regional Provident Fund Commissioner reported in (1982) 4 FLR 2007,*** held as follows:-

"Applying the above order to the present situation I try to decipher the answer to these questions in the present case-

- *Was he doing the work for monetary payment?*
  A- Indeed, it is an admitted fact in the instant case.
- *Was the work done by him as the work of the establishment or had he nexus with such work.*
  A. The work done by Prakalpa Sahayaks is an integral part of the work of the establishment WBSCL.
- *Was the payment made to the person for the physical and mental efforts in such connection with such work.*
  A- Indeed, the work of motivators in sanction/ disbursement of loans and other activities required good amount of physical and mental work
- *Was the work such that it had to be done as directed by the establishment or under its supervision and control to the extent that supervision and control are possible having regard to the specialized nature of work or skill needed for its performance?*
  A- The fixing of targets and assignment of particular work as enumerated in paragraph 14 of the instant order very well answers the above question.
- *Was the work of such nature and character that ordinarily a master servant could exist and but for the agreement styling it as a contract, common practice and common sense would suggest a master servant bond?*
  A- The assignment of other activities as mentioned in the paragraph 14 of this order goes on to suggest that there

indeed was a master-servant relationship between the two, otherwise assignment of these other duties by the employer would never be complied with by the Sahayaks

- *Was the relation indicative of master servant status in substance having regard to economic realities, irrespective of the nomenclature devised by parties?*

  A- The economic realities in this case are indicative since the Sahayaks belong to the lower economic strata of the society whereas the employer is a body corporate being funded by the Government of West Bengal.

- *Was he required to do the work personally without the liberty to get it done through someone else?*

  A- The fact that Prakalpa Sahayaks are engaged after an interview process, the records showed that on 08/10/2007, for example, an Interview notice was given to Smt. Reena Chakraborty who applied to be engaged as a motivator/Prakalpa Sahayak Therefore it can be safely said that motivators are specifically engaged through due process and the work they perform is designated upon the people who clear the interview only and no one else

From the above discussion it is clear that the present case satisfies the test of an employer-employee relationship as codified in the above said Judgment."

3. The respondent no.2 finally decided that Prakalpa Sahayaks as defined by the WBSCL (the establishment) have to be treated as employees under the EPF & MP Act, 1952 and order the establishment to enroll them as EPF members since their respective Date of joining. The said task needs to be completed within 60 days of the date of receipt of the order failing which appropriate action deemed fit under law as assessment of dues under Section 7A of the Act may be taken against the establishment.

4. The petitioner's case herein is that the petitioner/company is a state Government owned Corporation under the direct control of the Department of Self-Help Group & Self Employment, Government of West Bengal. It is financially, functionally, and administratively controlled by the Government of West Bengal. The Petitioner company only implements the Directive Principles of State Policy and works for the benefit and benevolence of the society at large through implementation of various schemes, of the State Government in such capacity and only acts as a nodal agency of the Government for the benefit of the people of West Bengal. By a notification no. 222-SH/2P-49/07 dated 23/05/2007, **the Government of West Bengal had conceived of engagement of "Motivators" to assist prospective entrepreneurs in the State of West Bengal to avail themselves of various schemes, provided guidance and for appropriate implementation thereto.** Such ad hoc engagement of "Motivators" is renewable from time to time to generate self-employment of unemployed youth. **The Motivators are to be paid performance relating incentives to be decided by the Department of Self-Help Group& Self-Employment.**

5. It is stated that by making newspaper publication, Motivators are engaged and the various schemes of the Government, which encourage self-employment of unemployed youth are made known to the public at large and implemented. **The petitioner company does not carry out**

any independent business, but it is only a nodal agency of the Government of West Bengal. In respect of the Motivators, incentive and T.A. bills are raised by the Motivators on the petitioner company which are forwarded by the petitioner company to the Government of West Bengal in the Administrative Department in consideration whereof, the Government releases fund to the petitioner company.

6. The Motivators do not work for or in connection with the work of the establishment in relation to the petitioner company, but they are only acting **to motivate unemployed youth to entrepreneurship with Government aid/support/subsidy.** Towards this motivation, the Government pays certain amount of **incentive to the Motivators** through the petitioner company.

7. The employees of the petitioner company are governed by the provisions of the EPF&MP Act, 1952. However, there is no notification, so as to cover these type of activity of the petitioner establishment under the provisions of the said Act of 1952. **The Motivators are actually Prakalpa Sahayaks.** They had initiated action against the Government of West Bengal for upwardly revision and enhancement of the Travelling Allowance, which had been turned down by the Finance Department despite recommendation of the Department of Self-Help Group& Self-Employment.

8. Some of the Prakalpa Sahayaks filed a Writ Petition in the Hon'ble High Court at Calcutta for permanence and salaried employment and for equal pay for equal work like Government employees. **The same was turned**

down by the Hon'ble Court vide Judgment and order dated 29.09.2021 in WPA 11630 of 2021, wherefrom the nature of work and activities of the Prakalpa Sahayaks will further appear.

9. The Provident Fund Authorities initiated a proceeding by a letter dated 21.10.2021 regarding non-extension of provident fund benefits to the Prakalpa Sahayaks on the basis of a purported complaint made by one of the Prakalpa Sahayaks on 07.09.2021. The proceeding initiated by the Provident Fund Authorities was in terms of the provisions of para 26B of the EPF Scheme, 1952, and the petitioner is participating on the basis that the Regional Provident Fund Commissioner was only exercising the jurisdiction for resolution of doubt and nothing beyond that.

10. Finally, the PF authority passed the impugned order dated 17.02.2023 which has been challenged in the present writ application on the ground that the said impugned order is bad in law and that the respondent no. 2 failed to appreciate that **Prakalpa Sahayaks are not employees within the meaning of Section 2(f) of the EPF & MP Act. 1952 made with the corresponding provisions of the EPF Scheme, 1952.** It is further stated that the respondent no. 2 failed to appreciate that merely receiving money from the Government through a nodal agency does not make a person of the society to be employed by the petitioner company.

11. The petitioner further reiterates that the respondent no.2 did not appreciate the fact that the work done by the Prakalpa Sahayaks is not the integral work of the petitioner establishment and that **the work**

performed by the Prakalpa Sahayaks against incentive was only towards fulfillment of Directive Principles of State Policies and not for any business or any activity of the petitioner Company and further that the respondent no.2 failed to appreciate that the assignment of work was only for the purpose of implementing Government schemes and no amount of business is earned by the petitioner company through implementation of Government schemes.

12. It is submitted that the finding of the authority concerned, that there exist a Master-Servant relationship or an Employer-Employee relationship is also bad in law. **It is stated that the Prakalpa Sahayaks are equivalent to LIC agents which the authority concerned failed to appreciate.** It is further stated that the motivators/ Prakalpa Sahayaks are free to carry out their individual trade, profession, avocation, business or otherwise.

13. **On filing the affidavit-in-opposition, the respondent nos.4 and 5** herein have stated that the said respondents were appointed through interview and through issuance of appointment letters and that the engagement of the motivators is entirely in terms of Government Notifications and the Corporation only goes for such recruitment process when they are in need of such personnel. It is, thus, stated this proves the said motivators perform their duties in connection with the work of the petitioner corporation. It is further stated **that the motivators receive remuneration in the form of incentive based on their performance for the duties.**

14. It is further stated that they are the employees of the petitioner/Corporation **who are reimbursed for the duties they perform after verification of performance.** This proves that the Corporation has full control and authority over motivators. It is, thus, stated that this proves the Master-Servant, Employer-Employee relationship and that they clearly fall within the definition of "employee" under Section 2(f) of the Act and, as such, are eligible for provident fund membership even if he/she is engaged for one day in connection with the work of the establishment with effect from 01.11.1990 in terms of Notification G.S.R. 689 dated 19.10.1990. **The said respondents further rely upon the provisions of Section 2(b) of the Act which defines 'basic wages' and submits that the reimbursement, remuneration, incentive received by them is covered under the term "basic wages."**

15. In reply to the said affidavit-in-opposition filed by the respondent nos.4 and 5, the petitioner has denied the entire case of the said respondents as stated therein and has reiterated its case as made out in the writ application.

16. The petitioner reiterates that the engagement of the respondent nos.4 and 5 is purely temporary in nature and confers no right to claim regular employment. It is stated that the said motivators are entitled only to performance-based incentives, and **not to any fixed wages or salary or employment benefits. "Motivators" is not a sanctioned created post. The motivator has not been appointed, but engaged**

for projects of Government. It is stated that motivators are purely engaged on incentive basis and could be terminated at any time without assigning any reason whatsoever and the engagement is subject to renewal from time to time at the discretion of the society. It is further stated by the petitioner that in clause 11 of Notification No. 222-SH/2P-49/07 dated 23.05.2007 it is clearly mentioned the description of engagement of Motivator i.e. "such engagement shall not entitle the Motivators to any claim / right for any kind of Employment under the said Society / State Government in any manner whatsoever".

17. **The letter of engagement of the Prakalpa Sahayaks formerly known as Motivators are not their contract of employment,** as such any incentive earned in accordance with their performance with the terms of the letter of engagement for their performance in motivating the youth is **not same as 'Basic Wages' defined under Section 2(b) of the EPF & MP Act**.

18. The motivators do not satisfy the definition of "Employees". It is denied that the Motivators are engaged under certain terms and conditions with emoluments earned for duties or that the Petitioner exercises high degree of control over the Motivators.

19. They don't receive remuneration for service rendered to the petitioner establishment. In fact the added respondent has wrongfully used remuneration with reimbursement. It is further stated that Neither the Notification nor the interview process governing the engagement of Motivators specifies or defines their status as "employee" under Section

2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. **There is no indication that such engagement would amount to regular employment entitling the individuals to statutory benefits under the Act.** It is also stated that individuals engaged as Prakalpa Sahayaks do not satisfy the essential criteria laid down under the EPF and MP Act, 1952, to qualify as "employees" within the meaning of Section 2(f) thereof.

20. **The respondent nos.1 and 2** being the provident fund authority herein, in their affidavit-in-opposition have supported the case of the respondent nos.4 and 5 and have stated that the establishment is covered under the activity of companies offering life insurance, annuity etc. and so they are the employer.

21. It is further stated by the respondent nos.1 and 2 that the motivators are remunerated in the form of incentive/TA/Bonus based on their performance work which is core to the functioning of the establishment. It is also stated that the instant proceeding under Section 26B were neither meant for granting any government employment to the Prakalpa Sahayaks nor for any permanent salaried employment with necessary pay structure. It is a fact that deduction and remittance of provident fund dues do not require any permanent salaried/government employment. The respondent/PF authority further states that the engagement of the motivators is entirely in terms of Government Notification and the Corporation only goes for such recruitment process when they are in need of that particular service.

Thus it may be said that the duties performed by the Motivators/Prakalpa Sahayaks are in connection with the work of the Corporation and there are various level of control under the arms of the Government of West Bengal.

22. It is also submitted that the engaged Motivators by West Bengal Swarojgar Corporation Limited very much comes under the definition of "employee" as per Section2(f) of the Employees' Provident fund & Miscellaneous Provisions Act, 1952 (herein after referred as the Act). The Act does not classify the employees' as temporary/permanent and being an employee by virtue of provision under Section 2(f) read with para 2(f) of Employees' Provident Fund Scheme, 1952 (herein after referred to as the Scheme) is eligible for PF membership even if he/she is engaged for I(one) day even, in connection with the work of the establishment with effect from 01.11.1990 in terms of Notification No.G.S.R. 689 dated 19.10.1990.

23. It is further stated that the above argument is to be read with **Section 2(b) of the Act, defining "basic wages"** specifically which states that ………… All emoluments which are earned by an employee while on the duty or **(on leave or on holidays with wages in either case)** in accordance with the terms of the contract of employment.

24. Therefore, in this instant case the engagement of the motivators are on certain terms and conditions (as specified under Notification No.222-SWH/2P-49 dated 23.05.2007), as also evident from their letter of engagement and the emoluments they earn for rendering their duties, constitutes their wages whatsoever, the nomenclature is in use in lieu of the term of "wages," i.e. incentive and the establishment has the full control and authority over the activities of the motivators, being their employer. Further, the corporation exercises a high degree of control over the Sahayaks as various orders are given to the Prakalpa Sahayaks from the arms of the Government of West Bengal.

25. Thus the contention of the establishment that the Prakalpa Sahayaks/Motivators are not employees, they act as good as agents of LIC who earn incentive/TA/Bonus on performance basis does not defend the true spirit of legislation and also should not be a constraint in application of the statute.

26. In the affidavit-in-reply filed by the petitioner to the affidavit-in-opposition of the respondent nos.1 and 2, the petitioner has stated that the establishment cannot be covered under the Schedule to the Act or under the EPF Scheme, 1952 referred notifications. And, as such, it is stated that the Prakalpa Sahayaks are not employees within the meaning of Section 2(f) of the EPF & MP Act, 1952. They are not employed by the Petitioner establishment for hire or reward in connection with the work of the establishment, and hence they are not to be treated as employees of the establishment. There is no relation indicative of master-servant status in subsistence between the Petitioner and the Prakalpa Sahayaks having regard to the economic realities.

27. **The parties herein have filed their written notes along with judgments relied upon by them.**

28. On filing the written notes, learned senior counsel **Mr. Majumder** appearing for the petitioners, argues that the motivators were engaged through newspaper advertisement by the Society for Self Employment of Unemployed Youth, West Bengal; for the purpose of carrying out the assignment given by the District Self Help Group and Self Employment Officer/Block Development Officer/Municipal Youth Officer/Borough Youth Officer from time to time.

29. The engagement letters were not issued by the petitioner company. The motivators are given incentives and TA bills which they raised on the petitioner. Petitioner forwards those bills of the motivators to the Government. Government releases the fund to the petitioner and the petitioner gives the same to the motivators.

30. The petitioner has relied upon a judgment passed by a Co-ordinate Bench in ***WPA No.11630 of 2021 (Atiyar Rahaman Molla & Ors. vs. The State of West Bengal & Ors.)*** wherein the co-ordinate Bench has directed enhancement of the rates of incentive and Travel Allowance (TA) payable to the petitioners therein being the prokolpo sahayaks, being the respondent nos.4 and 5 herein.

31. While passing the said judgment, the Court, in the said judgment, observed as follows:-

> *".....that in terms of Government of West Bengal, Department of Self-Help Group and Self Employment Notification No.222-SH/2P-49/07 dated 23.05.2007. '**Motivator' means a person or a group of persons or an organization not***

being prospective entrepreneur under the schemes and is engaged as such to motivate and assist the prospective entrepreneurs to avail of the Scheme, provide guidance for appropriate implementation of the project and play decisive role in motivating the beneficiaries to repay the loan. *Engagement of the applicants, in terms of para 11 of the Notification No.222-SH/2P-49/07 dated 23.05.2007* ***are ad hoc and temporary in nature.*** *The engagement may be renewed from time to time at the discretion of the Society for Self Employment of Unemployed Youth (SSEUY). Such engagement shall not entitle the Motivators to any claim/right for any kind of employment under the Society/State manner Government in any whatsoever. The engagement of Motivators may be terminated at any time without assigning any reason whatsoever* ***The Motivators shall be entitled to only performance-related incentive, as may be decided by the Department of Self Help Group and Self Employment.*** *These conditions of engagement were clearly mentioned in the engagement letters issued by the Society as can be found from a copy of the engagement letter adduced by the petitioners as Annexure P-2 to the Writ Petition. The petitioners. accepted the engagement letter knowing full well that their* *engagement was purely ad hoc and temporary in nature.* ***Secondly, the petitioners, Motivators (Prakalpa Sahayaks) are paid Performance-based Incentive.***

The conditions of engagement of the petitioners nowhere leave any room of doubt that such engagement is not at all akin to any Government Employment, where the employees are paid a fixed periodical remuneration. The principle of equal pay for equal work may be said to have applicability in case of a Government Employee on a fixed remuneration. However, the petitioners are entitled to incentive, implying that the better the performance, the better the incentive (i.e., the earning). It is a quite fair system but one in which the principle of equal pay for equal work can never be applicable."

32. **Mr. Majumder** keeping in line with the judgment, submits that the element of "employee" is absent in the present case and, as such, the impugned order passed by the authorities herein is erroneous and not in accordance with law.

33. The following judgments have been relied upon by the petitioner:-

i) ***Satish Plastics vs. Regional Provident Fund Commissioner*** (Passed by Gujarat High Court in Civil Application No.2345 of 1978 dated 06.08.1980)

ii) Pawan Hans Ltd. & Ors. vs. Aviation Karmachari Sanghatana & Ors.) (2020) 13 SCC 506;

34. The respondent nos.4 and 5, in their written notes of argument, have relied upon the Memorandum dated 21.02.2017 bearing No.1093-F(Y) issued by the Chief Secretary, Finance Department, Govt. of W.B., paragraph 3 thereof reads as follows:

> "**3.** It has further been decided that the services of employees of all such restructured / merged PSUs / Corporations would not be affected in any way. The employees in such merged or restructured PSUs /Corporations will redeployed in the continuing PSUs / Corporation with which the original unit is merged or **detailed in the various offices in the Government with same terms & conditions of service."**

35. The said respondent nos.4 and 5 have relied upon the following judgments:-

i) M/s. P. M. Patel and Sons & Ors. vs. Union of India & Ors. [(1986)1 SCC 32];

ii) Officer-in-Charge, Sub-Regional Provident Fund Office & Anr. vs. Godavari Garments Ltd. [(2019) 8 SCC 149] particularly paragraphs 9.5, 9.9 and 10 thereof, which reads as follows:-

> ***"9.5.*** *On the issue where payment is made by piece-rate to the workers, would they be covered by the definition of "employee", this Court in Shining Tailors v. Industrial Tribunal, held that:*

"5. We have gone through the record and especially the evidence recorded by the Tribunal. The Tribunal has committed a glaring error apparent on record that whenever payment is made by piece-rate, there is no relationship of master and the servant and that such relationship can only be as between principal and principal and therefore, the respondents were independent contractors. Frankly, we must say that the Tribunal has not clearly grasped the meaning of what is the piece-rate. If every piece-rated workman is an independent contractor, lakhs and lakhs of workmen in various industries where payment is correlated to production would be carved out of the expression "workman" as defined in the Industrial Disputes Act. In the past the test to determine the relationship of employer and the workman was the test of control and not the method of payment. Piece-rate payment meaning thereby payment correlated to production is a well-recognised mode of payment to industrial workmen. In fact, wherever possible that method of payment has to be encouraged so that there is utmost sincerity, efficiency and single-minded devotion to increase production which would be beneficial both to the employer, the workmen and the nation at large. ***But the test employed in the past was one of determining the degree of control that the employer wielded over the workmen.*** *However, in the identical situation in Silver Jubilee Tailoring House v. Chief Inspector of Shops & Establishments*[3] *Mathew, J. speaking for the Court observed that the control idea was more suited to the agricultural society prior to Industrial Revolution and during the last two decades the emphasis in the field is*

shifted from and ***no longer rests exclusively or strongly upon the question of control.*** *It was further observed that a search for a formula in the nature of a single test will not serve the useful purpose, and* ***all factors that have been referred to in the cases on topics, should be considered to tell a contract of service.*** *Approaching the matter from this angle,* ***the Court observed that the employer's right to reject the end product if it does not conform to the instructions of the employer speaks for the element of control and supervision. So also the right of removal of the workman or not to give the work has the element of control and supervision.*** *If these aspects are considered decisive, they are amply satisfied in the facts of this case. The Tribunal ignored the well-laid test in law and completely misdirected itself by showing that piece-rate itself indicates a relationship of independent contractor and error apparent on the record disclosing a total lack of knowledge of the method of payment in various occupations in different industries.* ***The right of rejection coupled with the right to refuse work would certainly establish master-servant relationship and both these tests are amply satisfied in the facts of this case.*** *Viewed from this angle, the respondents were the workmen of the employer and the preliminary objection therefore, raised on behalf of the appellant employer was untenable and ought to have been overruled and we hereby overrule it.*

* * * * * * * * *

9.9 *In the present case, the women workers were certainly employed for wages in connection with the work of the respondent Company. The definition of "employee" under Section*

2(f) is an inclusive definition, and includes workers who are engaged either directly or indirectly in connection with the work of the establishment, and are paid wages.

10. *In the present case, the women workers were directly engaged by the management in connection with the work of the respondent Company, which was set up as a readymade garments industry in Marathwada. The women workers were paid wages on per-piece basis for the services rendered. Merely because the women workers were permitted to do the work offsite, would not take away their status as employees of the respondent Company."*

36. By filing their written notes the PF authorities being the respondent nos.1 and 2 herein, have reiterated their case as made out in their affidavit-in-opposition.

37. Now relying upon the judgment in **Godavari Garments Ltd. (supra)** in respect piece rate workers being covered under the definition of 'employee' (para 9.5) it has been held that:-

i) all factors that have been referred to in the cases on topics, should be considered to tell a contract of service.

ii) the Court observed that the ***employer's right to reject the end product if it does not conform to the instructions of the employer speaks for the element of control and supervision.*** *So also the right of removal of the workman or not to give the work has the element of control and supervision.*

38. In the present case, **there is no question of rejecting any end product** if it does not conform to the instruction of the employer, in view of the nature of work performed by the Prokolpo Sahayaks, which is entirely different from the casual, contractual or piece rated workers.

39. The Prokolpo Sahayaks who work as motivators, are paid performance relating incentives to be decided by the Department of Self-Help Group & Self-Employment.

40. A Prakalpo Sahayak (Project Assistant) operating as a Motivator is a grassroots or community-level field worker. Their core nature of work involves creating awareness, mobilizing local communities, and driving active public participation in government, social welfare, or developmental projects. They are entrusted with:-

(i) **Creating Awareness** by Educating the public about the benefits and objectives of specific government policies, health initiatives, or development schemes.

(ii) Persuading rural or targeted communities to adopt better practices (e.g., sanitation, healthcare, education).

(iii) Overcoming social, cultural, or traditional barriers through constant dialogue and persuasion.

(iv) Gathering local feedback, grievances, and community needs, and reporting them to higher authorities to improve project implementation.

(v) Ultimately, **the Motivator acts as the "human face" of the project,** turning abstract policy goals into tangible, accepted practices by inspiring trust and active involvement from the target population.

41. The motivators motivate unemployed youth to entrepreneurship with Government aid/support/subsidy. Towards this motivation, the Government pays certain amount of incentive to the Motivators through the petitioner company.

42. The High Court in **WPA No.11630 of 2021** vide an order dated 29.09.2021 held:-

> ***"The conditions of engagement of the petitioners nowhere leave any room of doubt that such engagement is not at all akin to any Government Employment, where the employees are paid a fixed periodical remuneration. The principle of equal pay for equal work may be said to have applicability in case of a Government Employee on a fixed remuneration. However, the petitioners are entitled to incentive, implying that the better the performance, the better the incentive (i.e., the earning). It is a quite fair system but one in which the principle of equal pay for equal work can never be applicable."***

43. Both parties have relied upon the definition of **"basic wages"** as defined under Section 2(b) of the EPF & MP Act, 1952:-

> ***"Section 2(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;"

44. Considering the said definition, it is to be seen as to what kind of wages/allowances/remuneration, would be covered/included in "basic wages" and/or which kind of remuneration would be covered/subjected to provident fund deduction.

45. In the present case, **the Prakalpo Sahayaks as motivators admittedly are not paid any "emoluments" "while on leave or on holdings"** as provided under Section 2(b) of the Act, which defines basic wages.

46. Yes, employees receiving only incentives can be entitled to Provident Fund (PF) benefits, **provided** their earnings are treated as **regular,** assured wages under an employment contract. However, **purely variable, performance-based payouts are generally excluded from PF calculations.**

47. The key factors determining PF eligibility are:-

Fixed Incentives: If the incentive is a guaranteed, uniform payment that every employee receives regardless of performance, it is considered a part of "Basic Wages" and is subject to PF contributions.

Variable Incentives: If the incentive is strictly performance-based, variable, and not universally paid to all employees, it is not subject to PF deductions.

48. In ***Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidyamandir, (2020) 17 SCC 643,*** the Supreme Court held:-

> ***"13.*** *Basic wage, would not ipso facto take within its ambit the salary breakup structure to hold it liable for provident fund deductions when it was paid as special incentive or production bonus given to more meritorious workmen who put in extra output which has a direct nexus and linkage with the output by the eligible workmen. When a worker produces beyond the base or standard, what he earns was not basic wage. This incentive wage will fall outside the purview of basic wage.*
>
> ***17. Any variable earning which may vary from individual to individual according to their efficiency and diligence will stand excluded from the term "basic wages" was considered in Muir Mills Co. Ltd. v. Workmen [Muir Mills Co. Ltd. v. Workmen, AIR 1960 SC 985] observing: (AIR p. 988, para 11)***
>
> *"11. Thus understood "basic wage" never includes the additional emoluments which some workmen may earn, on the basis of a system of bonuses related to the production. The quantum of earning in such bonuses varies from individual to individual according to their efficiency and diligence; it will vary sometimes from season to season with*

the variations of working conditions in the factory or other place where the work is done; it will vary also with variations in the rate of supplies of raw material or in the assistance obtainable from machinery. This very element of variation excludes this part of workmen's emoluments from the connotation of "basic wages". …"

18. *In Manipal Academy of Higher Education v. Provident Fund Commr. [Manipal Academy of Higher Education v. Provident Fund Commr., (2008) 5 SCC 428 : (2008) 2 SCC (L&S) 114] , relying upon Bridge and Roofs case [Bridge & Roofs Co. Ltd. v. Union of India, (1963) 3 SCR 978 : AIR 1963 SC 1474] it was observed: (SCC pp. 434-35, para 10)*

"10. The basic principles as laid down in Bridge and Roofs case [Bridge & Roofs Co. Ltd. v. Union of India, (1963) 3 SCR 978 : AIR 1963 SC 1474] on a combined reading of Sections 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.

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

19. *The term "basic wage" has not been defined under the Act. Adverting to the dictionary meaning of the same in Kichha Sugar Co. Ltd. v. Tarai Chini Mill Majdoor Union [Kichha Sugar Co. Ltd. v. Tarai Chini Mill Majdoor Union, (2014) 4 SCC 37 : (2014) 1 SCC (L&S) 773] , it was observed as follows: (SCC pp. 40-41, paras 9-10)*

"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

(2) 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."

***21.** Applying the aforesaid tests to the facts of the present appeals, no material has been placed by the establishments to demonstrate that the allowances in question being paid to its employees were either variable or were linked to any incentive for production resulting in greater output by an employee and that the allowances in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the opportunity. In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had*

> *become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusions of facts. The appeals by the establishments therefore merit no interference. Conversely, for the same reason the appeal preferred by the Regional Provident Fund Commissioner deserves to be allowed."*

49. In the present case there is no base (basic) wage and only incentive wage which has **direct nexus and linkage with the output** by the motivators (Prakalpo Sahayaks).

50. In ***Vivekananda Vidya Mandir (supra)*** it is further held that "certain earnings" are excluded, though they must be earned by employee in accordance with the terms of the contract of employment para 17 in ***Vivekananda Vidya Mandir (supra)*** clearly states:-

> ***"17. Any variable earning which may vary from individual to individual according to their efficiency and diligence will stand excluded from the term "basic wages" was considered in Muir Mills Co. Ltd. v.***

Workmen [Muir Mills Co. Ltd. v. Workmen, AIR 1960 SC 985] observing: (AIR p. 988, para 11)

"11. *Thus understood "basic wage" never includes the additional emoluments which some workmen may earn, on the basis of a system of bonuses related to the production. The quantum of earning in such bonuses varies from individual to individual according to their efficiency and diligence; it will vary sometimes from season to season with the variations of working conditions in the factory or other place where the work is done; it will vary also with variations in the rate of supplies of raw material or in the assistance obtainable from machinery.* ***This very element of variation excludes this part of workmen's emoluments from the connotation of "basic wages". ..."***

18. ………………………

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

51. The ***Muir Mills Co. Ltd. Kanpur vs Its Workmen, 1960 AIR 985, decided on 7 April, 1960,*** the Supreme Court held:-

"…………The real question therefore is whether the Government order required or authorised the company to include the incentive bonus and the production bonus which they had been so long paying in fixing the new piece rate for the purpose of compliance with the directions given in the Government order as regards the basic wages. In finding the correct answer to this question it is necessary to examine the entire scheme of the Government order. The relevant clauses of the Government order have already been set out. The purpose of the scheme, on the face of it, is to make it obligatory on the employers in different industries to keep wages of workmen at a certain level. This purpose is sought to be achieved by laying down on the one hand the basic wages Which must be paid and on' the other hand the dearness allowance-called in the Government order dear food allowance-which must be paid. The concept of basic wage is familiar to employers and workmen and all who have to deal with the problems of labour's remuneration. It may be

profitably remembered in this connection that the concept of a " basic " is not peculiar to wages alone. For instance, when any rationing system is introduced for any commodity, whether it is food, or coal, or petrol or some other commodity, it is usual to fix a quantum as the basic ration. The underlying idea is to fix some amount as what every individual coming under the system will get; while additional amounts to be fixed in accordance with further directions will be allowed to some individuals, in view of their special claims as supplementary rations. " Basic " in all such cases is what is normally allowable to all- irrespective of special claims. The phrase "I basic wages " is also ordinarily understood to mean that part of the price of labour, which the employer must pay to all work-' men belonging to all categories. The phrase is used ordinarily in marked contra-distinction to " dearness allowance ", the quantum of which varies from time to time, in accordance with the rise or fall in the cost of living.

Thus understood "basic wage" never includes the additional emoluments which some workmen may earn, on the basis of a system of bonuses related to the production. The quantum of earnings in such bonuses varies from individual to individual according to their efficiency and diligence ; it will vary sometimes from season to season with the variations of working conditions in the factory or other place where the work is done; it will vary also with variations in the rate of supplies of raw material or in the assistance obtainable from machinery. This very element of variation, excludes this part of workmen's emoluments from the connotation of " basic wages ". But, says the appellant, whatever may be ordinarily under. stood by the word " basic wages " hardly matters when the Government order itself contains a definition of " basic wage ". Clause 8, which has already been referred to is in these words:-" Basic Wages "

for the purposes of this order will mean consolidated wages payable to an employee on November 30, 1948, minus Dear Food Allowance calculated according to the rates prevalent in the concern on the said date." On behalf of the appellant Mr. Pathak concentrates on the words " consolidated wage ", and argues that everything which answers to the description of wage must be included in this process of consolidation. Contending next that the emoluments payable by way of production bonus and incentive bonus are " wages even if not ordinarily understood to be basic wages he argues that the result of the definition in cl. 8 is that basic wages for this *order is the sum total of all emoluments answering to the description of wages thus including production and incentive bonuses, but excluding by reason of the express words used " dearness allowance, In support of his argument that production or incentive bonuses which used to be paid by the company is also a kind of wage the learned advocate has placed strong reliance on some observations made by this Court in Titaghur Paper Mills Co., Ltd. v. Their Workmen (1) that a production bonus is in the nature of an incentive wage.*

We will presently consider how far the fact that these bonuses are in the nature of an incentive wage assists the appellant's contention that it has to be included in the "

consolidated wage" within the meaning of cl. 8 of the order. But before we do that, it will be proper to see exactly what this Court said in the above case. A question had been raised as regards the jurisdiction of the Industrial Tribunals to go into the question of any production bonus claim at all, that being a matter of agreement between the employer and the employees. In considering this question this Court thought fit to consider first what a production bonus essentially is. In the course of that discussion the Court said:-

"Before we go into the question of jurisdiction of a tribunal under the Industrial Disputes Act, 1947 (hereinafter called the Act), we should like to consider what production bonus essentially is. The payment of production bonus depends upon production and is in addition to wages. In effect it is an incentive to higher production and is in the nature of an incentive wage."

"There is a base or standard above which extra payment is made for extra production in addition to the basic wage. Such a plan typically guarantees time wage up to the time represented by standard performance and gives workers a share in the savings represented by superior performance."

"Therefore generally speaking, payment of production bonus is nothing more or less than a payment of further emoluments depending upon production as an incentive to the workmen to put in more than the standard performance. Production (1) [1959] SUPP. 2 S.C.R. 1012 bonus in this case also is of this nature and is nothing more than additional emolument paid as an incentive for higher production. We shall later consider the argument whether in this case the production bonus is anything other than profit bonus. It is enough to say at this stage that the bonus under the scheme

in this case also depends essentially on production and therefore is in the nature of incentive bonus."

It is important to notice that while the learned counsel is undoubtedly right in saying that a bonus related to production was described in this case as in the nature of an incentive wage, the Court was equally emphatic in laying down that such bonuses form no part of wages as ordinarily understood and again that these are in addition to basic wages. Can it be reasonably said that even such "incentive wage" though not forming part of basic wage' as ordinarily understood was intended to be included in the consolidation of wages which cl. 8 speaks of? The answer must be in the negative. While it is true that the word " consolidated wage " taken away from the context would import the inclusion of every kind of wage, we have to remember that here it is basic wage which is being, defined. It will be unreasonable to think that in defining basic wage the Government would include something which is always understood to be outside the ordinary concept of basic wage. Remembering as we must that it is basic wage which is being defined here it is reasonable to think that only such emolu- ments which are receivable by the workmen generally, as a normal feature of their earnings and therefore satisfy the characteristics of " basic wage ", are intended to be covered by the consolidation. It is because dear food allowance does not satisfy this characteristic that this has been expressly excluded. Mr. Pathak's argument that when in the case of dearness allowance an express exclusion has been made, everything else in the nature of wages has to be included would have been of great force ***but for the fact that when "basic wage" is being defined the presumption must be that anything which is essentially different and distinct from basic wage was not intended to be included……………..”***

52. Thus, from the discussion above, it is evident that the 'Prokolpo Sahayaks' work as moderators and are **paid incentive** to the extent and amount of work done **(variable).**

53. The incentive earned in this case is, thus, **not fixed** and that being the case, would not be subjected to contribution/deduction toward provident fund, even if taken along with the basic wage.

54. As such when admittedly the Prokolpo Sahayaks as motivators receive only incentives, which totally depends on the amount of work performed by them, which makes the income **variable,** the same cannot be taken for contribution/deduction, and that alone makes the Prokolpo Sahayaks **not eligible to be covered under the Employees Provident Fund and Miscellaneous Act, 1952.**

55. In respect of the guidelines in **Godavari Garments Ltd. (supra)** relied upon by the private respondents regarding the piece rated workers, it is clear that the service conditions of the piece rated workers is in no way similar to the service conditions of the Prokolpo Sahayaks working as motivators.

56. The question of rejection of work done by the Prokolpo Sahayaks does not arise, considering their nature of work and as such the element of direct control in their work is also absent.

57. Finally keeping with the view of the Co-ordinate Bench in WPA 11630 of 2021, ***Atiyar Rahaman Molla & Ors. vs. The State of West Bengal & Ors.,*** where in the Co-ordinate Bench held:-

> *"...............The petitioners. accepted the engagement letter knowing full well that their engagement was purely ad hoc and temporary in nature.* ***Secondly, the petitioners, Motivators (Prakalpa Sahayaks) are paid Performance-based Incentive.***
> ***The conditions of engagement of the petitioners nowhere leave any room of doubt that such engagement is not at all akin to any Government Employment, where the employees are paid a fixed periodical remuneration. The principle of equal pay for equal work may be said to have applicability in case of a Government Employee on a fixed remuneration. However, the petitioners are entitled to incentive,***

> ***implying that the better the performance, the better the incentive (i.e., the earning). It is a quite fair system but one in which the principle of equal pay for equal work can never be applicable."***

58. The said observation also supports the view, taken by this Court that **the incentive received by the Prokolpo Sahayaks being variable, thus not fixed,** (and also not entitled to any wages while on leave or holidays) cannot be subjected to the contribution/deduction towards provident fund and thus the respondents no. 4 and 5 herein representing the Prokolpo Sahayaks are not entitled to the benefit as decided by the respondent provident fund authorities vide the impugned order, which thus being not in accordance with law is set aside and quashed.

59. **The writ petition being WPO 1222 of 2023 is accordingly allowed.**

60. Interim order, if any, stands vacated.

61. Connected applications, if any, also stands disposed of.

62. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(SHAMPA DUTT (PAUL), J.)

A.Sadhukhan