(2011) 11 AP CK 0030

Andhra Pradesh High Court

Case No: Writ Petition No : 9923 of 1999

The Regional Provident Fund Commissioner, Hyderabad		APPELLANT
	Vs	
The E.P.F. Appellate Tribunal and M/s. H.A.L. Senior Secondary School		RESPONDENT

Date of Decision: Nov. 25, 2011

Acts Referred:

- Companies Act, 1913 - Section 186
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14B, 5, 6
- Payment of Wages Act, 1936 - Section 5
- Provident Funds Act, 1952 - Section 6
- Sick Industrial Companies (Special Provisions) Act, 1985 - Section 22(1)

Hon'ble Judges: Nooty Ramamohana Rao, J

Bench: Single Bench

Advocate: R.N. Reddy, SC for Employees Provident Fund, for the Appellant; P. Nageswara Sree, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Hon''ble Sri. Justice Nooty Ramamohana Rao

1. This writ petition has been preferred by the Regional Provident Fund Commissioner, Hyderabad, challenging the validity of the order passed on 01.09.1998 by the Employees Provident Fund Appellate Tribunal, henceforth referred to as Tribunal'', allowing the appeal preferred by the second respondent herein,

2. The second respondent institution is an establishment covered under the provision of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952, henceforth called as The Act'', with Code No. AP/18505. On the premise that the said establishment had failed to pay the contributions in time and in terms of the provision contained in Paragraph 38 of the Employees'' Provident Funds Scheme, on the component of Dearness Allowance paid to the employees working therein, relating to the period from January 1988 to February 1991, the writ petitioner initiated action in terms of Section 14B of the Act. After hearing the second respondent, an order was passed by the petitioner on 25.11.1997 imposing damages of Rs.19,342/- at 25%, though there is power available to levy damages to the extent of 100%. Against this levy, the second respondent preferred an appeal before the first respondent-Tribunal in ATA-1 (19)/98, The said appeal was allowed by the Tribunal on 01.09.1998. Challenging the validity of this order of the Tribunal, the present writ petition has been instituted.

3. Heard Sri R.N. Reddy, learned standing counsel for the Employees'' Provident Fund Organization on behalf of the petitioner and Sri P. Nageshwarashree, learned counsel for the second respondent-Establishment.

4. It is contended by Sri R.N. Reddy that in terms of Section 6 of the Act, contribution shall be paid by the employer to the fund calculated on the basic wages and Dearness Allowance payable to each of the employees working under him and since the second respondent had failed to make appropriate contributions, in that regard, action in terms of Section 14-B is legitimately liable to be initiated. Section 14-B, according to the learned counsel for the petitioner, entitles recovery of damages and penalty from the defaulting employer. There is no dispute, according to the learned counsel for the petitioner, that the second respondent has committed the default in making contribution on the Dearness Allowance component for the period from January 1998 to February 1991 and hence, recovery of damages should not have been faulted at all by the first respondent-Tribunal.

5. Sri Nageshwarashree contends that the second respondent has been making faithfully the contributions which it is otherwise liable to make, which also includes the contributions made by the employees concerned. However, the second respondent-Establishment has enhanced the quantum of Dearness Allowance component payable to their teachers with retrospective effect from 01.01.1988 and the arrears of the enhanced Dearness Allowance component were paid to the teachers on 20.03.1991 and the provident fund contribution due thereon was promptly deposited by 05.04.1991 itself which is well within the time period prescribed for making such a payment and hence the question of committing a default in the matter of payment of contribution by the second respondent does not arise, warranting levy of damages on that score.

6. There is no dispute that the second respondent-Establishment had enhanced the Dearness Allowance payable to its teachers with retrospective effect and

consequently paid the arrears only on 20.03.1991 for the period commencing from 01.01.1988 up to 20.03.1991. It is also not in dispute that the contributions payable on that score under the Act have also been deposited by the second respondent on 05.04.1991 itself which is well within the time limit prescribed there for. It is further not in dispute that, subsequent to the amendment brought about to Section 6 of the Act, (by amending Act 46 of 1960, which was brought into force with effect from 31.12.1960,) the component of Dearness Allowance is also liable to be taken into reckoning for the purpose of working out the contributions under the Act. It is further not in dispute that the employee and the employer both are liable to make respective contributions in terms of Section 6 under the Act. Therefore, as and when the basic wages and the Dearness Allowance component thereon become payable to an employee, there from springs the obligation on the part of the employer as well as the employee to make the necessary quantum of contributions thereon.

7. It is appropriate to notice the relevant provisions of the Act and the scheme framed there under. In terms of Section 6, the employer is required to make the contribution to the fund at 8.33% (as per the Amending Act 33 of 1988, holding the field then) of the Basic wages, Dearness Allowance and Retaining Allowance for the time being payable to each of the employees and the employees contribution shall be equal to the contribution payable by the employer in respect of him and may, if such an employee desires, be an amount exceeding the said 8.33% of his Basic Wages, Dearness Allowance and Retaining Allowance, without fastening any obligation to make additional contribution by the employer. If an employer makes default in the payment of any contribution to the fund or in payment of any charges payable under the provisions of the Act or any scheme framed thereunder, the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government may recover from the employer by way of penalty, such damages not exceeding the amount of arrears, in terms of Section 14-B of the Act. In terms of Section 5 of the Act, Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees'' Provident Fund Scheme for establishment of provident funds. The fund so created shall vest in Central Board constituted by the Central Government and shall be administered by the Central Board. The matters for which provision may be made in such a scheme have all been detailed in Schedule II of the Act. Accordingly, the Central Government framed the Employees Provident Funds Scheme, 1952. In Para 26 of the Scheme, the classes of employees who are entitled and required to join the fund have been spelt out. Para 29 details the contributions payable by the employer and the employees. Paragraphs 29 and 30 will have some bearing on the subject matter of this case and hence, it will be appropriate to extract the relevant portions thereof.

29. Contributions

(1) The contributions payable by the employer under the Scheme shall be at the rate of [8.33 per cent] of the [basic wages, dearness allowance (including the cash value

of any food concession) and retaining allowance (if any)] payable to each employee to whom the Scheme applies:

(2) The contribution payable by the employee under the Scheme, shall be equal to the contribution payable by the employer in respect of such employee:

(3) The contributions shall be calculated on the basis of [basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any)] actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis.]

.....

30. Payment of contributions

(1) The employer shall, in the first instance, pay both the contributions payable by himself (in this Scheme referred to as the employer''s contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member''s contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member''s contribution) and shall pay to the principal employer the amount of member''s contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer''s contribution) and also administrative charges.

3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

Explanation: For the purposes of this paragraph the expression "administrative charges" means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix.

(Emphasis is generated by me)

8. The employee''s contribution, which is paid by the employer at the first instance, can be recovered by means of deduction from the wages as per Paragraph 32 of the Scheme. Para 38 deals with the mode of payment of contributions and hence, it will also be appropriate to extract the same herein below:

38. Mode of payment of contributions

(1) The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee''s contribution from his wages which together with his own contribution as well as an administrative charge of such percentage [of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, as the Central Government may fix. He shall within fifteen days of the close of every month pay the same to the Fund by separate bank drafts or cheques on account of contributions and administrative charge].

(2) The employer shall forward to the Commissioner, within twenty-five days of the close of the month, a monthly abstract in such form as the Commissioner may specify showing the aggregate amount of recoveries made from the wages of all the members and the aggregate amount contributed by the employer in respect of all such members for the month:

Provided that an employer shall send a Nil return, if no such recoveries have been made from the employees :

[Provided further that in the case of any such employee who has become a member of the Pension Funds under the Employees'' Pension Scheme, 1995, the aforesaid Form shall also contain such particulars as are necessary to comply with the requirements of that Scheme.]

(3) The employer shall send to the Commissioner within one month of the close of the period of currency, a consolidated Annual Contribution Statement in Form 6A. showing the total amount of recoveries made during the period of currency from the wages of each member and the total amount contributed by the employer in respect of each such member for the said period. The employer shall maintain on his record duplicate copies of the aforesaid monthly abstract and consolidated annual contribution statement for production at the time of inspection by the Inspector.

(Emphasis is generated by me)

9. From a perusal of Section 6, 14-B of the Act and Paragraphs 29,30 and 38 of the Scheme, it emerges that contributions liable to be made compulsorily by the employer and the employees shall be paid at the first instance by the employer and subsequently he is entitled to recover the amount of contribution liable to be made by the employee from the wages payable to him. It is not in doubt that the Scheme has got statutory force. But, however, the statute as well as the scheme has employed the expressions such as "Payable", "Actually drawn", and "Recoveries made". These expressions are descriptive expressions. They are incapable of any precise meaning. They are all used in a complimentary sense to each other.

However, it must be understood that the expression "Payable" means, the one which is legally recoverable. Further, while construing such an expression, it is always appropriate to bear in mind the context in which and the setting in which the said phrase has been used by the statute maker.

10. Right at this stage, it will be appropriate to notice as to how the Supreme Court has dealt with a somewhat similar issue in the following cases.

In New Delhi Municipal Committee Vs. Kalu Ram and Another, the Supreme Court held:

30.....Thus the Estate Officer has to determine upon hearing the objection the amount of rent in arrears which is ''payable.'' The word ''payable'' is somewhat indefinite in import and its meaning must he gathered from the context in which it occurs. ''Payable'' generally means that which should be paid..... Construing the expression "any money due" in section 186 of the Indian Companies Act, 1913 the Privy Council held in Hans Raj Gupta and others v. Official Liquidators of the Dehradun Mussorie Electric Tramway Company Ltd. 1940 PC 98 that this meant moneys due and recoverable in suit by the company, and observed: "it is a section which creates a special procedure for obtaining payment of moneys; it is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights." We are clear that the word "payable" in section 7, in the context in which it occurs, means "legally recoverable.

In J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, the Supreme Court held:

14..... Therefore, the expression ''tax payable'' under the said two sub-sections is the full amount of tax due and ''tax due'' is that amount which becomes due ex hypothesi on the turnover and taxable turnover "shown in or based on the return". The word ''payable'' is a descriptive word, which ordinarily means "that which must be paid or is due or may be paid" but its correct meaning can only be determined if the context in which it is used is kept in view. The word has been frequently understood to mean that which may, can or should be paid and is held equivalent to ''due''.....

In Life Insurance Corpn. of India Vs. Shri Raj Kumar Rajgarhia & Anr. 1994 (3) SCC 465, the Supreme Court held:

16..... Therefore, the words "all moneys due" found in the automatic non-forfeiture clause will have to be construed to mean such amounts which have become not only due but also payable under the terms of the agreement.....

In Organo Chemical Industries and Another Vs. Union of India (UOI) and Others, a, Justice A.P. Sen, has dealt with the purport of Section 14-B of the Act and held as under:

30. It would thus be manifest that the petitioners instead of making their contributions, deliberately made willful defaults on one pretext or another and have been utilizing the amounts deducted from the wages of their employees, including their own contributions as well as administrative charges, in running their business. The Regional Provident Fund Commissioner, therefore, rightly observed that the petitioners having regard to their past record must be visited with the maximum penalty.

31.....

32. Before stating the contentions raised by learned Counsel for the petitioners, we think it convenient to set out the scheme of the Act and the relevant provisions thereof having a bearing on the question to be determined. It would be relevant to take into account some of the provisions of the Provident Funds Act which have since its inception in 1952, been subjected to various amendments. The Provident Fund Act, 1952 as originally enacted, provides for the institution of compulsory provident funds for employees in factories and other establishments. It applies to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed and to any other establishment employing twenty or more persons or class of such establishments which the Central Government may specify in that behalf by Notification in the Official Gazette. u/s 4, the Central Government framed the Employees'' Provident Funds Scheme, 1952 by S.R.O. 1509, dated September 2, 1952. Section 6 of the Act enjoins on every employer to make contribution to the Employees'' Provident Fund at the rate of 6 1/4% of the basic wages, dearness allowance, retaining allowance, if any, for the time being payable to each of the employees and the employees'' contribution shall be equal to the contribution by the employer in respect of him. The employee at his option may, however, increase the contribution to the extent of 8-1/3%.

.....

45.- The Traditional view of damages as meaning actual loss, does not take into account the social content of a provision like s. 14B contained in a socio-economic measure like the Act in question. The word ''damages'' has different shades of meaning. It must take its colour and content from its context, and it cannot be read in isolation, nor can s. 14B be read out of context. The very object of the Legislation would be frustrated if the word ''damages'' appearing in s. 14B of the Act was not construed to mean penal damages. The imposition of damages u/s. 14B serves a two-fold purpose. It results in damnification and also serves as a deterrent. The predominant object is to penalise, so that an employer may be thwarted or deterred from making any further defaults.

46. The expression ''damages'' occurring in Section 14B is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object of

imposition of penalty u/s 14B is not merely ''to provide compensation for the employees''. We are clearly of the opinion that the imposition of damages u/s 14B serves both the purposes. It is meant to penalise defaulting employer as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirements of Section 6, but at the same time it is meant to provide compensation or redress to the beneficiaries i.e. to recommence the employees for the loss sustained by them. There is nothing in the section to show that the damages must bear relationship to the loss which is caused to the beneficiaries under the Schemes. The word ''damages'' in Section 14B is related to the word ''default''. The words used in Section 14B are ''default in the payment of contribution'' and, therefore, the word ''default'' must be construed in the light of Para 38 of the Scheme which provides that the payment of contribution has got to be made by the 15th of the following month and, therefore, the word ''default'' in s. 14B must mean ''failure in performance'' or ''failure to act.'' At the same time, the imposition of damages u/s 14B is to provide reparation for the amount of loss suffered by the employees.

11. While concurring with Justice A.P. Sen''s Judgment, Justice V.R. Krishna Iyer has brought out forcefully the merit and meaning of Section 14-B of the Act in the following words:

2.....The viability of the project depends on the employer duly deducting the workers'' contribution from their wages, adding his own little and promptly depositing the nickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function. The dynamics of this beneficial statute derives its locomotive power from the funds regularly flowing into the statutory till.

3. The pragmatics of the situation is that if the stream of contributions were frozen by employers'' defaults after due deduction from the wages and diversion for their own purposes, the scheme would be damnified by traumatic starvation of the Fund, public frustration from the failure of the project and psychic demoralisation of the miserable beneficiaries when they find their wages deducted and the employer get away with it even after default in his own contribution and malversation of the workers'' share. ''Damages'' have a wider socially semantic connotation upon pecuniary loss of interest on nonpayment when a social welfare scheme suffers mayhem on account of the injury.....

.....

17. What are the strands which make the fabric of ''damages'' under the Article? I have stated earlier that the composite idea of ''damages'' includes more than pecuniary compensation. Moreover, the injured party is the Board of Trustees who administer the Fund. That Fund not merely loses the interest consequent on the non-payment but receives a shock in that its scarce resources are further famished

by employers'' default. There is great social injury to the scheme when employers default in numbers. So the lash of the law is delivered when its object is frustrated. What is more denuciatory is the fact that the employer makes deductions from the poor wages of the workers (and makes them suffer to that extent) and diverts even those sums for his private purposes by failing to make prompt remittances. Thus, default in contributions is compounded by embezzlement, as it were, Naturally, damages will take an exemplary character and inflict a heavy blow on the shady defaulter.....

12. It is not uncommon for wages and sometimes the allowances payable thereon including Dearness Allowance to get revised periodically. It is not also uncommon that some of these revisions are brought about with retrospective effect. Particularly in the private sector employment, revision of wages or allowances takes place after protracted correspondence and or after negotiations between the employer and the employees either on individual basis or through the process of collective bargaining. Further, a structured format - as a kind of a ready reckoner for revision of wages or allowances to take place with precise time gap -would seldom be available to regulate the exercise of revision of pay or allowances. Revision of wages and allowances is undertaken essentially with a view to neutralize the inflationary trends and also with a sense of recognition of the contribution of the working classes for the progress achieved by the establishment. Therefore, there cannot be any precise formula readily available for one to undertake revision of either wages or allowances payable thereon. It is, therefore, appropriate to note that revision of wages and allowances could take place with retrospective effect also and the same is very much within the realm of possibility. Whenever such revision takes places with retrospective effect, the arrears payable on account of such revision will be worked out and then paid. The arrears mean, the differential amount between the revised wage/allowance structure minus what has already been paid on that score. These arrears will be paid, either in one lump sum or sometimes, if agreed to by both sides, in installments. In such cases fictionally or notionally, wages or allowances may have become payable with a back date but the actual reality would be that they would have become due on the day of acceptance of such revision. Illustratively put, if an employer agrees on 01.07.2010 to revise the wage structure and or dearness allowance payable to his employees with effect from 01.07.2008, the new wage or allowance becomes notionally payable with effect from 01.07.2008 no doubt, but, the crystallization of such a right having taken place on 01.07.2010, for all purposes of reckoning, it is 01.07.2010 which should be treated and taken as the date on which the said amount has become due and payable. Viewed from this perspective, the contention canvassed by the second respondent-Establishment and as accepted by the first respondent-Tribunal appears to be plausible, legitimate and correct.

13. However the learned counsel for the petitioner has drawn my attention to the Judgment rendered by a Division Bench of the Kerala High Court in Calicut Modern

Spinning & Weaving Mills Vs. Regional Provident Fund Commissioner 1982 LAB.I.C. 1422 and also the Judgment rendered by a learned single Judge of Bombay High Court in Ralliwolf Limited Vs. The Regional Provident Fund Commissioner-1, Thane 2001 LAB.I.C. 280 and others and also the Judgment rendered by my illustrious brother Justice Goda Raghuram in W.P.No. 17550 of 2005 on 22.08.2005 and that of a Division Bench of our High Court in Sarvaraya Textiles Limited Vs. Commissioner, Employees Provident Fund Commission, Hyderabad and Others,

14. In my opinion, the Judgments upon which the learned counsel for the petitioner has placed reliance upon, are clearly distinguishable. When a learned single Judge of the Kerala High Court made a reference of the following question: as to whether for the period when no wages were payable on account of a justifiable lock-out, was the employer liable to make contribution to the Provident Fund?, the Division Bench answered that, even in cases of a lock-out, strike, etc, the employer has to make the necessary contributions and any defaults in that respect will have to be visited by damages u/s 14-B. Similarly, the learned single Judge of the Bombay High Court, when called upon to decide as to whether the action to recover dues payable under the Act, is maintainable when the employer who has sought to be proceeded against, is an industrial company in respect of whom a proceeding is ''pending under the Sick Industrial Companies (Special Provisions) Act, 1985, answered the said question holding that the provisions of Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, would not be of any assistance to such an employer having regard to the nature of the payments required to be made by way of Provident Fund and other contributions under the Employees Provident Fund Act, 1952. My learned brother Justice Goda Raghuram, while dealing with W.P.No. 17550 of 2005 has arrived at exactly the same conclusion while dealing with the requirement to make contributions under the Employees'' State Insurance Act by a defaulting employer against whom proceedings under Sick Industrial Companies (Special Provisions) Act, 1985, were pending. Earlier, a Division Bench of our High Court in M/s Sarvaraya Textiles Ltd. Case had also come to the same opinion that the provision of Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, have no application to the Provident Fund Scheme framed under the Employees'' Provident Fund Act and the dues under the Employees'' Provident Fund Act, do not fall within the purview of Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. These cases, therefore, did not deal with a situation as to whether the liability can be fastened on to the employer, even prior to any obligation arising for payment of wages.

15. It is appropriate to remember that once wages and allowances are fixed or agreed to be paid at a particular rate on month to month basis to the employees, (or at such other agreed shorter duration of period) such wages and allowances become due and payable in accordance with the terms of the contract of service entered into by and between the employee and employer, on expiry of each month or such other agreed period. Right to receive such wages is earned by an employee

for having rendered work for the whole of wage earning tenure (such tenures can be weekly or fortnightly even). The obligation to make the contributions under the Act thereon springs up on the day so fixed, either in accordance with the terms of contract governing the employee and employer or statutory terms, (such as Section 5 of the Payment of Wages Act) for effecting the said payment. Such an obligation to make the contributions under the Act, thereafter, does not wait for the actual or physical payment of it to occur. Irrespective of the date on which such payment has been actually made, the obligation to make the contribution under the Act stares at the employers who are obliged to make such contributions in terms of Section 6 of the Act on the day originally fixed for effecting wage payment. For instance, by virtue of a term contained in a contract of employment between the employer and employees, monthly wages are liable to be paid or disbursed on or before 15th of the succeeding month, the obligation to make the contribution under the Act springs up latest by 15th of each succeeding month, irrespective of the fact whether by the said date, the whole of the wages has been disbursed or not. It may not be difficult for one to visualize a situation, where, for variety of reasons, including the financial distressful conditions or the sickness of the establishment, or as part of a scheme of misutilization, the disbursement of the wages may not have been carried out strictly in accordance with the terms of the contract binding the employer and the employee or even the statutory regimen governing such an obligation, as the one contained in terms of Payment of Wages Act. But however, such private arrangements of either deferred payments or payments by installments is not liable to be taken into consideration for purposes of avoiding of making the contributions otherwise liable to be made in accordance with Section 6 of the Act.

16. In juxtaposition, let''s take a case where each employee working under an establishment covered by the provisions of the Act has been receiving Rs.10,000/- as basic wages and Rs. 1,500/- per month as dearness allowance and no default is committed by the employer either in disbursement of these wages and allowances or in paying up the contributions thereon under the Act. If, at a later point of time, the employer agrees to revise these wages with retrospective effect to Rs. 11,000/- towards basic wages and Rs.2,000/- towards dearness allowance thereon, the obligation to make payment as per the revised pay format/ structure springs up only on the day such a decision has been taken, though the said decision may be operational with effect from a back date. For purposes of making the contributions under the Act, therefore, the right to receive the wages by the employee is the most vital factor. Such a right throws a corresponding obligation upon the employer, first to make the contributions under the Act, and then seek to recover that portion of the employee''s share later. Sans the right, therefore, no obligation springs up. Paragraph 29 of the Scheme deserves a closer scrutiny. Paragraph 29(3) specifies that the contributions shall be calculated on the basis of basic wages, clearness allowance and retaining allowances if any actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis. The words ''actually

drawn'' hold the key for understanding the obligations thrown on the employer and the employee under the Act to make their respective contributions. These words must be understood as actually due, payable and drawn, if the disbursement has physically taken place or even if such disbursement has not occasioned, they must be understood as liable to be drawn and payable. They became liable to be drawn only when they become due and payable. This may be illustrated for purpose of easy grasp. Take a case where an employee secures leave of absence for a couple of months and proceeds on Earned Leave. During these two months, since the employee is absent and not attending to the establishment, physical disbursement of his wages may not have taken place for sheer non-availability of the individual. The actual payment or disbursement may have occasioned on the day when he reports after availing the leave of absence of two months, but, nonetheless, the contributions for these two months have got to be made promptly in accordance with the Act, as if the wages including allowances have been disbursed to that employee in time though in reality it may not have happened. Hence the contributions liable to be made under the Act cannot be deferred to the actual date of their drawal and disbursement. Notionally, it should be treated as if wages have been drawn and disbursed to the employee as they are otherwise due and payable and on that basis, the contributions must be made. As was already noticed supra, due to conditions of financial distress or sickness, or even due to other designs, an establishment may not have actually paid the wages to its work force but it cannot defer its obligation under the Act to make the contributions on month to month basis. These type of cases stand entirely on a different footing from cases where the actual disbursement is made pursuant to a revision of wage structure and or allowances payable, with retrospective effect. This is the essential distinction that gets attracted to the words ''actually drawn''. In cases of revisions of wages or allowances effected with retrospective effect, the obligation to make the contribution gets, in fact, postponed to the actual due date of payment and disbursing the same, either in one go or on installment basis.

17. In the result, writ petition is devoid of any merit and hence, is dismissed, but however without costs.