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## KERALA HIGH COURT ON HRA EXCLUSION FROM EPF CONTRIBUTION

### A. Introduction

Kerala High Court (**HC**), in *Trayi v. Assistant Provident Fund Commissioner*,<sup>1</sup> held that House Rent Allowance (**HRA**) must be excluded from basic wages when determining Employees' Provident Fund (**EPF**) contributions by employers.

### B. Brief Facts

1. Trayi, a company, was covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (**EPF Act**).
2. Post inspection by an enforcement officer, a notice under Section 7A (*Determination of moneys due from employers*) of the EPF Act was issued on the Company, demanding payment of EPF contribution on allowances including HRA and dearness allowance (**DA**).
3. Trayi contended that allowances paid to its employees do not fall within the definition of 'basic wages' under Section 2(b) of the EPF Act. Trayi also referred to Para. 29 (*Contributions*) of the Employees' Provident Fund Scheme, 1952, which specifies that contributions must be paid only on basic wages, DA and retaining allowances.
4. However, Trayi was directed by the Assistant Provident Fund Commissioner (**APFC**) to pay EPF contribution on allowances including HRA. The Appellate Tribunal (**AT**), set aside the APFC's order and remanded the matter for assessment of dues, excluding HRA.
5. Trayi's counsel contended that contribution is only payable on basic wages and DA, and not on allowances that vary from employee to employee.
6. APFC's counsel relied on the 2016 case of *Employees Provident Fund Organization v. M.S. Raven Beck Solutions (India) Ltd.*,<sup>2</sup> where the management was directed to effect contributions on uniform allowances, uniform washing, food and travelling allowances.

### C. Order and Analysis

The HC:

1. Extracted the AT's order with approval, where it was held: "*It is seen that HRA component which is specifically excluded U/s. 2(b) (2) of the Act is also included in the assessment. The impugned order is that "The allowance is merely a balancing component after allocating the total wages into various nomenclatures like basic, HRA, conveyance etc. and the same possess all the characteristic of basic wages as per the definition." Impliedly all the allowances are taken into consideration including that of HRA. The learned Counsel for the appellant pointed*

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<sup>1</sup> *Trayi v. Assistant Provident Fund Commissioner, Employees Provident Fund Organization and Ors.* (KERHC – 23.03.2022): MANU/KE/1217/2022.

<sup>2</sup> *Employees Provident Fund Organization v. M.S. Raven Beck Solutions (India) Ltd.* (KERHC – 15.10.2020): MANU/KE/2818/2020.

*out that since HRA is specifically excluded under the provisions of the Act, it is not correct on the part of the respondent authority to include HRA for assessment of provident fund contribution.*

2. Clarified that the expression “dues” not only includes basic wages, but also allowances.
3. Explained that it would be for the Company to distinguish before the APFC, between allowances paid to all employees, and allowances that differ between employees and are based on their efficacy and work.

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