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KARNATAKA HIGH COURT ON PROVIDENT FUND CONTRIBUTION

A. Introduction

The High Court of Karnataka (“**HC**”), in the *Eagle Hunters Pvt Ltd* case,¹ held that as per Section 12 of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (“**Act**”), an employer cannot reduce the wages to avoid provident fund contributions.

B. Brief Facts

1. Eagle Hunters Private Limited (“**EHPL**”), an establishment covered under the Act, was alleged that to have failed to pay employee provident fund (“**EPF**”) contributions on house rent allowance (“**HRA**”) payable to its employees.
2. The Regional Provident Fund Commissioner (“**RPFC**”) passed order under Section 7A of the Act for shortfall in contribution.
3. EHPL challenged the order before the EPF Appellate Tribunal (“**Tribunal**”). The appeal was allowed, and the Tribunal quashed the order of the RPFC.
4. Aggrieved, the RPFC filed the present writ petition before the HC on the ground that it is arbitrary, illegal, non-speaking and contrary to law.

C. RPFC’s Contentions:

RPFC relied on a plethora of Supreme Court judgements² and contended that:

1. If any allowance is paid to all employees, then it forms a part of ‘basic wage’ and must be included for EPF contribution.
2. EHPL was not providing HRA in lieu of not providing staff quarters but it was an allowance provided to all employees.
3. The Tribunal had erred in quashing the well-reasoned order passed of the RPFC.

D. HC’s Judgement and Reasoning

The HC:

1. Noted that EHPL is engaged in the business of supply of labour to industries and establishments, and it bifurcated the salary into various allowances and made EPF contribution only on basic wages.
2. Observed that: “*A bare reading of the [Section 12] makes it clear that the employer cannot reduce, whether directly or indirectly, the wages of any employee to whom the [Act] applies*” and that: “*It is perhaps well to observe that under Section 7-A of the Act, the Commissioner is entitled to conduct an enquiry and decide the*

¹*Regional Provident Fund Commissioner, Bangalore vs Eagle Hunters Pvt. Ltd*, W.P. 43868/2011(L-PF).

²*Bridge & Roof Co. (India) Ltd v. Union Of India*, AIR 1963 SC 1474; *Manipal Academy Of Higher Education v. Provident Fund Commissioner*, 2008 SCC OnLine SC 498; *Group 4 Securitas Guarding Limited v. Employees’ Provident Fund Appellate Tribunal*, (2012) 132 FLR 921 (Del); and *Regional Provident Fund Commissioner II, West Bengal, and another v. Vivekananda Vidya Mandir and others*, 2005 SCC OnLine Cal 13.

question whether the splitting up of the pay by the Employer to his/its Employees has been done only with a view to avoid payment of contribution to the provident fund or not.”

3. Allowed the petition and held that the order of the Tribunal was unsustainable in law since it failed to appreciate that splitting of wages as violative of Section 12 of the Act.

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