



कर्मचारी भविष्य निधि संगठन

(श्रम एवं रोजगार मंत्रालय, भारत सरकार)

**EMPLOYEES' PROVIDENT FUND ORGANISATION**

(Ministry of Labour & Employment, Govt. of India)

मुख्य कार्यालय / Head Office

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Through web circulation only

No: LC/7/(17)10/EPFAT/MH

Dated:-

5 DEC 2011

To

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All the Regional P.F. Commissioners  
Regional/Sub-Regional offices

**Sub: Important Judgment in Court cases under EPF & M.P. Act,1952-reg.**

**Ref: ATA/No. 726(9)2010 before the EPFAT,Delhi order dated 20.5.11**

Sir,

Please find enclosed herewith a copy of EPF Appellate Tribunal order dated 20/5/2011 passed in ATA No 726(9)2010 in the matter of M/s The Alamner Coop Bank Ltd. Vs APFC, Nasik for information/record and reference in future. This can be made useful while defending similarly placed cases.

Yours faithfully

Encl: As above

(Manoj Yadav)

Regional P.F. Commissioner-II (Legal)

**Copy to RPFC, NDC with a request to upload the order dated 20.5.2011 on the website.**

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**EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL  
NEW DELHI**

**A.T.A. No. 726(9)2010**

Between

M/s The Alamner Coop. Bank Ltd.

.....Appellant

Vs

APFC - Nasik

.....Respondent

**ORDER**

**Dated the 20<sup>th</sup> May, 2011**

**Present: Sh. Kailash Pandey & Sh. Ranjeet Singh, Advocate for Appellant.  
Sh. Sushmita Lal, Advocate for Respondent.**

The appeal in this case is preferred against the order passed by the PF authority under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act') directing the appellant to deposit the dues.

2. The case of the appellant is that the appellant is a bank registered under the Cooperative Societies Act. The establishment engaged the pigmy deposit collectors who worked for the bank and were receiving the commission and they are not the employee of the appellant. The EPF Authority initiated a proceeding under Section 7A of the Act and treated these pigmy collectors as the employee of the appellant and the commissioner paid to them as the wage and assessed the dues. The impugned order is illegal.

3. The case of the respondent is that the pigmy deposit collectors were working in connection with the work of the appellant establishment and they were being paid for their service so the deposit collectors were rightly treated as the employee of the appellant and the commission paid to them for their service amounts to basic wage so the appellant is liable

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Registrar, EPF & P

to pay the contribution for the said payment. So the assessment has been made correctly.

4. It is contended that the pigmy deposit collectors are not the employee of the appellant and the commission paid to them does not amount to basic wage so the appellant is not liable to contribute for the same.

5. The advocate for the respondent supported the impugned order passed by the Authority.

6. Section 2(f) of the EPF Act defines the word 'employee' as follows:

*2(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of [an establishment] and who gets his wages directly or indirectly from the employer, and includes any person,-*

*(i) employed by or through a contractor in or in connection with the work of the establishment;*

*(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment);*

The definition makes it clear that a person working in or in connection with the work of the establishment and earning emoluments for the same is to be treated as the employee of the establishment. In the case in hand, the pigmy deposit collectors were undoubtedly working in connection with the work of the establishment and they were being paid for their work so they are rightly treated as the employee of the appellant establishment.

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7. The word wage has not been defined in the Act though Section 2(b) defines basic wages. As per the Law of Lexicon by Sh. Premnath Iyyar wage means, "giving of security for the performance of anything." In the case in hand, the commission paid to the pigmy deposit collectors satisfies the definition of wage so the commission paid can be treated as basic wage. In the case of Indian Bank Association Vs. Workmen of Syndicate Bank reported in 2001 Vol. 1 LLJ page 1045, the lordship held that, "The commission received by the collectors is nothing else but wages which depends on period of activity."

8. Thus in view of the discussion held above, since the pigmy agents were undoubtedly working in connection with the work of the establishment and the commission paid to them satisfies the definition of wage they are rightly treated as the employee of the establishment and also the commission paid to them is rightly treated as wages, so, no infirmity is noticed in the order of the Authority. Hence ordered, the appeal is dismissed. The order of the Authority is hereby upheld. Copy of order be sent to the parties. File be consigned to record room.

  
**(SRIKANTA NAYAK)**  
**PRESIDING OFFICER, EPFAT**

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**New Delhi**