

Update for Compliance under the Employees Provident Fund & Miscellaneous Provision Act, 1952

Supreme Court ruling on the allowances for contribution under the Employees Provident Fund & Miscellaneous Provision Act, 1952

The recent judgment passed on 28-02-2019 by the Hon'ble Supreme Court in the matter

- Regional Provident Fund Commissioner Vs. Vivekananda Vidyamandir & Others,
- Surya Roshni Ltd Vs. Employees Provident Fund & Others,
- U-Flex Limited Vs. Employees Provident Fund & Others,
- Montage Enterprises Private Limited Vs. Employees Provident Fund & Others,
- Saint Gobain Glass India Limited Vs. Employees Provident Fund & Others

Background of the Case

The multiple appeals before the Hon'ble Supreme Court is raised whether the certain allowances (special allowance ,other allowance ,travel allowance management allowance canteen allowance, education allowance ,medical allowance city compensatory allowance, etc.) are to be 'basic wages' and PF contribution is payable on these allowances or not.'

Supreme Court Ruling

The following principles of past judgments are examined and referred by court and followed in the case

- Where the wage is universally, necessarily and ordinarily paid to all across the board such emolument are basic wages;
(Bridge and Roof Co. (India) Ltd., Vs Union of India (1963) 3 SCR 978
(Manipal Academy of Higher Education Vs. Provident Fund Commissioner, (2008) 5 SCC 428
- Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. For ex. 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;

(Bridge and Roof Co. (India) Ltd., Vs Union of India (1963) 3 SCR 978

(Manipal Academy of Higher Education Vs. Provident Fund Commissioner, (2008) 5 SCC 428

- Conversely, any payment by way of a special incentive or work is not basic wages.
(Bridge and Roof Co. (India) Ltd., Vs Union of India (1963) 3 SCR 978
(Manipal Academy of Higher Education Vs. Provident Fund Commissioner, (2008) 5 SCC 428
- Any variable earning which may vary from individual to individual according to their efficiency and diligence will stand excluded from the term basic wages-
(Muir Mills Co. Ltd., Vs. Its Workmen, AIR 1960 SC 985)
- 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. Those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wages. 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 wages
(Kichha Sugar Company Ltd. through General Manager. Vs. Tarai Chini Mill Majdoor Union, Uttarakhand, (2014) 4 SCC 37)
- That the Act is beneficial social welfare legislation and must be interpreted as such;
(The Daily Partap Vs. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh, (1998) 8 SCC 90.

The position of law has been discussed in above judicial precedents and the Hon'ble Supreme Court reached on below conclusion.

- Applying the aforesaid tests to the facts of the present appeals, no material has been placed by the establishment 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 allowance 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.
- 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.
- 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 had arrived at a 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. Therefore appeals by the establishments merit no interference. Conversely, the appeals preferred by the Regional Provident Fund Commissioner deserves to be allowed.

Conclusion

- Basic Wages – All emoluments earned by an employee, in accordance with the term of contract, while on duty or on leave or on holidays, which is paid in cash would be basic wages.
- Further where the wage is universally, necessarily and ordinarily paid to all across the board such emolument are basic wages. Whatever is not paid by all concerns or may not be earned by all employees of a concern is excluded from the definition of basic wages.
- If the nature of allowances is on the below mentioned principles then same is not basic wages or can be excluded at the time of remitting PF contribution.
 - Allowances which are paid especially to those who avails the opportunity;
 - Allowances which are variable in nature and vary individual to individual;
 - Allowances which are linked to any special incentive for production resulting in greater output by an employee;
 - Allowances which are not paid across the board to all employees in a particular category.
- Employees Not Impacted by Hon'ble Supreme Court Ruling

Employee whose pay at the time he is otherwise entitled to be a member of the fund exceeds Rs.15000.00 per month (Rs.6500.00 per month prior to 01.09.2014) may not get impacted due to this ruling where PF wages exceed the statutory wage ceiling under the Employees Provident Fund & Miscellaneous Provision Act, 1952.

In my opinion

- 1. It is time to draft a comprehensive wage structures of the employees, which should be based on the principles enumerated above to ensure compliances under the Employees Provident Fund & Miscellaneous Provision Act, 1952.**
- 2. The wage structure is to be revised for the contractual employees as the principal employer is liable for PF contribution relating to contract employees.**
- 3. There may be chances of past noncompliance with interest and penal damages.**
- 4. For past noncompliance employer have to bear the liability of both the share i.e. employee and employer contribution. Employee contribution is non-recoverable from the employee for the past noncompliance period.**
- 5. The judgment passed by the Hon'ble Supreme Court has only interpreted the position of the law that already placed in statute and was also discussed in the past by the court in the matter Bridge and Roof Co. (India) Ltd., Vs Union of India (1963) 3 SCR 978 and Manipal Academy of Higher Education Vs. Provident Fund Commissioner, (2008) 5 SCC 428, thus the implication would be retrospective.**

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