
**SPECIAL ALLOWANCES FALL WITHIN THE DEFINITION OF BASIC WAGES IN THE
CONTEXT OF PROVIDENT FUND CALCULATIONS**

1. INTRODUCTION

The Supreme Court passed a judgment on February 28, 2019¹ which will have far-reaching consequences to the definition of *basic wages*² under Section 2 (b) (ii) read with Section 6³ of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (the "**EPF Act**").

The judgment relates to appeals filed by concerned establishments on the question whether special allowances paid by an establishment to its employees would fall within the definition of *basic wages* in the context of calculating contributions to employee provident funds.

2. REAFFIRMING BRIDGE ROOF

The judgment has once again reaffirmed certain aspects, which had been laid down by the Supreme Court in *Bridge and Roof Co (India) Ltd Vs Union of India*⁴ ("**Bridge Roof**"), a landmark case relating to the interpretation of allowances that should be taken into consideration for the purpose of deduction of contribution under Section 6 of the EPF Act.

¹ https://www.sci.gov.in/supremecourt/2008/2232/2232_2008_Judgement_28-Feb-2019.pdf

² "**basic wages**" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include- (i) the cash value of any food concession; (ii) any dearness allowance that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living, house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment; (iii) any presents made by the employer;

³ Contributions and matters which may be provided for in Schemes - The contribution which shall be paid by the employer to the Fund shall be *****percent. Of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "ten percent", at both the places where they occur, the words "12 percent" shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off of such fraction to the nearest rupee, half of a rupee, or quarter of a rupee.

Explanation I - For the purposes of this section dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation II. - For the purposes of this section, "retaining allowance" means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.

⁴ (1963) 3 SCR 978

In the Bridge Roof case, it was held that only such allowances, which are not payable by all concerns or may not be earned by all employees of the concerns or may not be earned by all employees of the concern, would stand *excluded* from deduction.

3. DETERMINING BASIC WAGES

The Supreme Court, in its judgment has determined certain tests as below:

- (a) Only those emoluments earned by an employee in accordance with the terms of employment, would qualify as *basic wages*;
- (b) discretionary allowances not earned in accordance with the terms of employment, would not be included in the calculation of *basic wages*;
- (c) Any such payments, which are ordinarily not made universally, ordinarily and necessarily to *all* employees, will not fall within the definition of *basic wages*;
- (d) The calculation of *basic wages* would not take into account any special incentive or bonus given which has a direct nexus and linkage with the output of an eligible workman; and
- (e) If any payment was to be *excluded* from basic wages then such a payment must have a direct access and linkage to the payment of special allowances as not being common to all. The crucial test being of universality.

While taking into account *inter-alia* the tests highlighted above, the Supreme Court pronounced in the judgment that the appellants could not place any material on record that the allowances in question were either variable or linked to any incentive for production resulting in greater output by an employee; and that the allowances were not paid across the board to all employees in a particular category; or were being paid especially to those who avail the opportunity.

In order that the amount goes beyond the basic wage, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work.

4. INDUSLAW VIEW

Currently, employers are supposed to contribute 12 per cent of the basic wage of their eligible employees under the EPF Act and the judgment is likely to have significant implications for employees take home pay and provident fund related financial obligations of the employer.

The Supreme Court has once again provided clarity to the aspect of *basic wages*, ensuring appropriate compliance of the provisions of the EPF Act, which have been subject to varied interpretation and challenge by several organizations.

It is therefore, expected that the judgment will provide more clarity to organizations in ensuring compliance with the EPF Act.

It should be noted that the judgment does not restrict an employer from providing a wage structure or determining several components of salary of employees.

The onus would be on the employer to ensure that it takes into account the relevant components of salary, in ensuring compliance with its obligations under the EPF Act.

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