

AVOID RECKLESS SPLITTING OF WAGES INTO ALLOWANCES FOR PROVIDENT FUND

Vulnerable segregating wages to save EPF contributions will cost dearly to the employers

by H.L. Kumar

The judgment of the Supreme Court shall have to be understood in right perspective and implemented. The same would call for restructuring of the current wage structure to be compliant with the law. It would enhance liability of employers towards PF contribution. The employees shall also have to make enhanced contribution which result in reduction in their take home pay.

Millions of rupees are deducted and deposited towards provident fund contributions by over 11,83,905 establishments for 22,05,13,525 employees as covered under the Employees' Provident Funds & MP Act. Despite paying matching share of the provident fund contributions equivalent to 12% of the wages of the employees, the employers have overlooked the implications and interpretations of the wages for contributions. While issuing the appointment letters to the employees, the employers' recklessness is found to be most shocking. The discrepancy with regard to the splitting of wages into several allowances speaks volumes about the glaring irresponsibility. Some of the common allowances are given below :

•Special Allowance (irrespective of any specialisation), •City Compensation Allowance (even when an employees is posted in a small town), •Tiffin Allowance, •Night Shift Allowance, •Hardship Allowance, •Supplementary Allowance, •Punctuality Allowance, •Attendance Allowance, •Children Education Allowance, •Travelling Allowance, •Uniform Allowance, •Washing Allowance, •Tea Allowance, •Canteen Allowance, •Leave Travel Allowance, •Milk Allowance, •Make Up Allowance, •Newspaper Allowance, •Regularity Allowance, •Suspension Allowance, •Medical Allowance, •Production Allowance, •Heat Gas and Dust Allowance, •Meal/Food Allowance, •Overtime Allowance, •Wellness Allowance, •Performance Allowance, •Field Working Allowance, •Re-Location Allowance, •Compensatory Allowance, •Cash Handling Allowance, •Supervisory Allowance, •Steno Typist Allowance, •Computer Allowance, •Conveyance Allowance, •Area Allowance, •Driver Allowance, •Cycle Allowance, •Entertainment Allowance, •Non-practising allowance, • Additional allowance, •Management Allowance •Club Allowance, etc. etc.

As a result thereto, the employers are often caught in the dragnet of the PF authorities, who derive perverted pleasure in harassing them. It is seen that some employers split the wages into allowances without considering as to what for that allowance is given. Now the Supreme Court in its judgment dated 28.2.2019 reported in 2019 LLR 339 has upheld the judgments of the High Courts of Madhya Pradesh and Madras. An appeal by EPFO against judgment of Calcutta High Court has been accepted by the Supreme Court holding that special allowance will also form the part of wages for EPF contributions.

For instance, special allowance is invariably even by the employers, in addition to basic wages, but when questioned by the concerned authority for determination of EPF dues, as what is the speciality for giving a special allowance, no valid clarification is offered by the employer. While coming across such anomalies it was contemplated that such allowances can create problem for employers who will be liable to pay both the shares of contributions since section 12 of the Employees' Provident Funds & MP Act prohibits deduction of any contribution for more than one month's contributions. The Gujarat, Madhya Pradesh and Madras High Courts have held that all the allowances other than house rent allowance would attract provident fund contributions. Despite that many employers have not cared to rectify their wage structures. This may lead to heavy financial liability in addition to interest, damages, even prosecutions and loss of face for the establishment that no material has been placed by the establishments 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 the allowances 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. In order that 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. The Hon'ble Court observed that : "There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period." Hence it is not possible to ascertain whether extra amounts paid to the workmen were in fact

paid for the extra work which had exceeded the normal output prescribed for the employees. The wage structure and its components have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at a factual 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 accordingly to the provident fund account of the employees. It is also observed by the Court that in order to treat such allowances beyond the scope of 'basic wages' under section 2(b) of the Employees' Provident Funds Act, 1952, it has to be shown that the employee concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in.

Basic wage, under the Act, has been defined as all emoluments paid in cash to an employee in accordance with the terms of his contract of employment. But it carves out some exceptions which would not fall within the definition of basic wage and includes dearness allowance apart from other allowances mentioned therein. But this inclusion of dearness allowance finds inclusion in section 6 of the Act.

Crucial Test is Universality

The test adopted to determine if any payment was to be excluded from basic wage is that the payment under the scheme must have a direct access and linkage to the payment of such special allowance as not being common to all. The crucial test is one of universality. It is pertinent to state that an employer, under the Act, 1952 has a statutory obligation to deduct the specified percentage of the contribution from the employee's salary and make matching contribution. The entire amount is then required to be deposited in the fund within 15 days from the date of such collection. Any variable earning which may vary from individual to individual according to their efficiency and diligence will stand excluded from the term 'basic wages'. Incentive wage paid to a workman for producing any extra base or standard, what he earns in normal course of duty, will fall outside the purview of basic wages. The factual matrix of the appellants establishments of the employers revealed that there was no data available on record to show that what were the norms of work prescribed for those employees during the relevant period. The Court held "It is, therefore, not possible to ascertain whether extra amounts paid to the workmen as Special allowance, were, in fact, paid for any extra work which had exceeded the normal output prescribed for the workmen." However, the concept of 'special allowance' remains in a grey area. If special allowance is paid for any special work/assignment or that by way of incentive (not fixed), it should be excluded from the purview of 'basic wages'. However, when questioned by the EPF Authority, the employer has to produce records and prove that the payment was not being paid necessarily, compulsorily and ordinarily to the employee(s).

Don't Repeat the Mistake to Repent Again

The judgment of the Supreme Court should be taken by the employers as wake-up call and it is appropriate time to consider and devise an economical but attractive wages structure from the beginning of the financial year. It has been seen that many employers have been adopting those allowances which were not required and overlooking those which were appropriate within the parameter of 'basic wages' under the Employees' Provident Funds & MP Act.

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