

IMPACT OF LATEST JUDGMENT OF SUPREME COURT

SALARY COMPONENTS FOR P F CONTRIBUTION

Mr. B.C. Prabhakar
Advocate & President, KEA
&
Mr. C.K.D Gowda
Advocate & Joint Secretary, KEA

The point frame for discussions and deliberation are as under:

- Salary components for PF contribution
- Splitting of minimum wages for PF contribution
- Judgment - Prospective or retrospective
- Restructuring process
- Way forward

In latest honorable Supreme Court's judgment, PF contribution will attract on all Fixed allowances paid to all employees on monthly basis except Variables namely:-

1. House Rent Allowance: Up to 40% of Basic
2. Leave Encashment
3. Statutory Bonus
4. Production Incentive: To the employee in respect of his work done in Such employment
5. Overtime Payment : If Pay Double
6. Notice pay in lieu of Termination

SC Observation

No material was placed on record by the employers to demonstrate that the allowances being paid to employees were:

- Variable; or
- Linked to any incentive for production resulting in greater output by an employee; or
- Not paid across the board to all employees in a particular category; or
- Being paid especially to those who avail the opportunity.

Restructuring

- If the establishment is paying only the minimum wages as prescribed by the Appropriate Government, there is no need for restructuring the wages consequent to the Supreme Court judgment. The PF contribution should be made on the minimum wages as prescribed by the Appropriate Government.
- If the establishment is paying over and above the minimum wages, the restructuring will be necessary in case of those employees whose basic wages + DA/VDA wherever payable, is less than Rs.15,000/- p.m.

In such cases, the minimum wages as fixed by the Appropriate Government should be retained. The amount over and above the minimum wages may be paid as allowances which would not attract EPF contribution in terms of the judgment.

Components which attract PF consequent to the Interpretation of SC Judgment

The definition of basic wages defined under the Act has been subject matter of Judicial Interpretation by the different High Courts and Supreme Court. Examples are stated below;

SL#	Wage components	Coverage	Basis
1	Basic wages or basic pay	Included	Section 2(b)
2	Dearness Allowance	Included	Section 6 and para 29
3	Special pay or special allowance	Included	
4	Wages during leave	Included	Being contract of employment
5	Wages during rest or holiday	Included	Being contract of employment

Components which attract PF consequent to the Interpretation of SC Judgment

SL#	Wage components	Coverage	Basis
6	Cash value of food concession	Included (from basic wage)	Para 29
7	Free/food tiffin allowance	Included	
9	City compensatory allowance	Included	
10	Retaining allowance / retention allowance	Included	Sec. 6 and para 29
11	Subsistence allowance	Included	Analogy of ESIC case rendered in popular automobiles is adopted (1997 AIR (SC) 3956)
12	Maternity Leave salary	Included	Since wages on leave included.
13	Night shift allowance or night allowance	Included	

Components which attract PF consequent to the Interpretation of SC Judgment

SL#	Wage components	Coverage	Basis
14	Canteen Allowance	Included	
15	Good work reward	Included	D.C.M., Shriram Consolidated Ltd., V. The Regional Provident Fund Commissioner, 2004 III LLJ 396 (Raj.DB)
16	Educational allowance	Included	
17	Medical/Sickness allowance	Included unless paid as reimbursement on production of bills	Medical/Sickness allowance
18	Lay off compensation	Included	
19	Ex-gratia adhoc payment paid every month	Included	

Components which attract PF consequent to the Interpretation of SC Judgment

SL#	Wage components	Coverage	Basis
20	House Rent Allowance	Excluded	
21	Overtime allowance	Excluded	Sec.2(b)(ii)
22	Leave encashment	Excluded	Manipal Academy of Higher Education V. Provident Fund Commissioner, 2008 II LLJ 666 (S.C.2J)
23	Statutory Bonus	Excluded	Sec.2(b)(ii)
24	Production or incentive bonus	Excluded	T.I.Cycles of India, Ambatuur, Chennai V. M.K. Gurumani & Ors., 2001 II LLJ 1068 (S.C.2J)

Components which attract PF consequent to the Interpretation of SC Judgment

SL#	Wage components	Coverage	Basis
25	Service charges collected from customers and paid to employer	Excluded	The Rambagh Palace Hotel, Jaipur V Rajasthan Hotel Workers Union, Jaipur, 1977 (34) FLR 12 (S.C.3J)
26	Notice pay in lieu of termination	Excluded	India United Mills Ltd. V. RPFC, 1959 II LLJ 733 (Bom HC)
27	One month wage u/s 33(2)(b) of Industrial Disputes Act	Excluded	Dinesh Khare V. Industrial Tribunal, 1982 II LLJ 17 (Raj.HC)

Retrospective or Prospective:

The judgment merely interprets the law or section

Hence, the meaning assigned will have the effect as if it is from 1st day of the statute

In the latest judgment in Vivekanand Vidya Mandir case the Supreme Court has reiterated the Bridge and Roof case (AIR 1963 SC 1474). Therefore, the judgment has retrospective effect.

Way Forward

- By recklessly splitting the wages, the Employers are caught in the dragnet of PF Authorities
- PF Authorities derive perverse pleasure in harassing Employers
- Judgment should be taken by the Employers as a wake up call
- It is time to restructure the salary to be in tune with the SC Judgment
- Where only minimum wages is paid, contribution be made on minimum wages.
- Keep in view the judgment of SC while concluding settlement on Charter of Demands
- Even in case of existing terms of settlement restructure the components after discussing with the workmen/trade union
- While fixing salary for fresh recruits avoid too many allowances