

SOHAIL & CO. views on judgement dated: 28/02/2019 on EPF CONTRIBUTION PAYABLE ON 'BASIC WAGES' CAMOUFLAGED AS ALLOWANCES delivered by Hon'ble SUPREME COURT of India.

This judgment was waited since 2011.

Nowhere in the Judgement it has been held that all allowances will attract contribution. In fact it has been held that allowances which are variable or not paid to all the employees will not attract contribution. Similarly payments for work beyond the norms will not attract contribution. Thus, all such allowances which are not paid universally, necessarily and ordinarily to all employees would not come under the sweep of 'basic wages'. Also the payment of production bonus or similar amount which is earned by an employee by availing the opportunity would not form part of basic wages.

The appeals have been dismissed because appellants have been held to have failed to prove these circumstances.

Allowances which are paid or payable to all employees without any discrimination or variation from trade categories or nature of work shall attract PF. However if field allowance is given to outdoor staff and not to office staff or hardship or night shift allowance given to the employees who work in night shift and similar such allowances may not attract PF as understood from the judgment in reference.

The final verdict of Apex Court in the matter of Surya Roshni & Others was based on Bridge & Roof case and same logic pertaining to uniformly, necessarily, ordinarily and paid/payable across the board have been emphasised by the Hon'ble Supreme Court in the case of Surya Roshni & Others too. Hence there is no change in the stand taken by the judiciary and ratified the judgment of Bridge & Roof. Consequently, not all allowances but allowances which are paid or payable ordinarily, uniformly, necessarily and across the board to all employees will form the part of basic wages under section 2(b) of the EPF Act 1952.

While issuing the appointment letters to the employees the recklessness of employers about splitting of wages is found to be most shocking. The discrepancy with regard to the splitting of many allowances speaks volumes about the glaring irresponsibility. They copy the wage pattern of any other establishment without making any changes for their own establishment which may not have any resemblance. After reading para 14 of the judgment our precautionary measure to avoid payment of PF contribution on allowances, establishment has to demonstrate as under;

- Ensure the allowances are paid to employees are variable.
- Allowance is linked to any incentive for production resulting in greater output by an employee.
- Allowances is not paid to all employees in a particular category.
- Allowance are being paid especially to those who avail the opportunity by fulfilling extra condition.
- Workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in.
- Extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen.
- Allowances in question were not essential part of the basic wages

What the Hon'ble Supreme Court has held;

The bench comprising Justice Arun Mishra and Justice Navin Sinha was considering a batch of appeals in which the issue was whether the special allowances paid by an establishment to its employees would fall within the expression "basic wages" under Section 2(b)(ii) read with Section 6 of the Act for computation of deduction towards Employees' Provident Fund.

14. Applying the aforesaid tests to the facts of the present appeals, 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. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. It is therefore 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 workmen. 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 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. There is no occasion for us to interfere with the concurrent conclusions of facts. The appeals by the establishments therefore merit no interference. Conversely, for the same reason the appeal preferred by the Regional Provident Fund Commissioner deserves to be allowed.

What next steps could be taken by the petitioner;

May file a review petition and as that is likely to be rejected in chambers, thereafter may file a curative petition.

At last;

It is a hammer knock on the Head of the stakeholders in the employment scenario!!! Also, has given caution to all!!

If any payments are found to be not genuine excluded allowances and only a subterfuge to reduce PF liability, those payments will be taken as basic wages.

There is no law which prescribes any specific salary structure for any type of industry or company. There is also no mandatory component but for 'basic salary'. Therefore, it is for the management to derive a salary structure for its employees. The number of components, one company can determine through contract of employment.

Since all the components in the name of Allowances except Basic wages, Dearness Allowance as 'filler', in the strict legal sense, it will be treated either as basic salary or as dearness allowance. Hence, this should be reckoned for PF because it is the nature (purpose) of payment which matters most and not the nomenclature.

In a nutshell, Salary structuring is to be done only **with Pay** but it is not with **Allowances!!!**

Also, beware with Contract Workers Wages too

Regards,
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