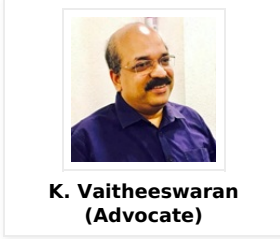


Deciphering the SC verdict as to what constitutes wages for PF purposes

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Background:

The Employees Provident Fund and Miscellaneous Provisions Act, 1952 (Act) was enacted to provide the institution of Provident Funds, Pension Fund, Deposit-linked insurance Fund for employees in factories and other establishments. Section 2(b) of the Act defines 'basic wages' to mean 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. It excludes cash value of food concession, dearness allowance, house rent allowance, bonus, commission or any other similar allowance payable to the employee in

respect of his employment of work done in such employment and any presents made by the employer.

Section 6 of the Act in the context of contribution however refers to 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.

Recent Supreme Court Decision on Special Allowances:

The Supreme Court in the case of **Regional Provident Fund Commissioner Vs. Vivekananda Vidya Mandir and Ors.** [[LSI-62-SC-2019\(NDEL\)](#)] has rendered a landmark decision dated **28.02.2019** with reference to Act on a common question of law as to *whether special allowance paid by an establishment to its employees would fall within the expression of 'basic wages' under Section 2(b)(ii) read with Section 6 of the Act for the purpose of computation of deduction towards Provident Fund.*

Some of the allowances in dispute before the Supreme Court were special allowance; variable dearness allowance; house rent allowance; travel allowance; canteen allowance; lunch incentive; management allowance; food concession; education allowance; medical allowance; special holidays; night shift incentives and city compensatory allowance.

The Supreme Court observed that

1. Basic wage has been defined with certain exceptions such as dearness allowance and other allowances. However, this exclusion of dearness allowance does not find place in Section 6. The test adopted to determine if any payment can be excluded from the 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.
2. Any variable earning which may vary from an individual to another will stand excluded from basic wages -*Muir Mills Co. Ltd. Vs. Its Workmen AIR 1960 SC 985.*
3. The Act was a piece of beneficial social welfare legislation and must be interpreted as such. -*The Daily Pratap Vs. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh. (1998) 8 SCC 90.*
4. In the case of *Bridge and Roof (India) Ltd. Vs. Union of India (1963) 3 SCR 978* and *Manipal Academy of Higher Education Vs. Provident Fund Commissioner (2008) 5 SC 428* it has been held that (a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages, (b) Where the payment is available to be specially paid to those who avail the opportunity it is not basic wages, (c) Any payment by way of a special incentive or work is not basic wages.
5. The term 'basic wage' has not been defined in the Act and the dictionary meaning of the same as interpreted in the case of *Kiccha Sugar Company Limited through General Manager Vs. Tarai Chini Mill Majdoor Union, Uttarakhand(2014) 4 SCC 37* was taken into consideration by the Court.

Applying these tests laid down in the earlier decisions, the Supreme Court held that

1. In order to show that the allowance has gone beyond the scope of basic wages, *there must be evidence to show that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in.*
2. No material has been placed by the establishments to demonstrate that the allowances being paid were either variable or linked to any incentive for production resulting in greater output by an employee and 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.
3. The lower authorities have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as an allowance to avoid deduction and contribution accordingly to the provident fund of the employees. There is no occasion to interfere with the concurrent conclusion of facts.

Impact:

The concept of wages has undergone changes over a period of time with many new industries, identifying the package to the employees with a multitude of allowances. In some cases, the employee is also given a choice in terms of what he / she would want as basic pay and what would constitute allowances.

The test laid down by the Supreme Court will now have to be applied to each and every allowance to examine whether the allowance is excluded from the ambit of wages or not.

If the test for exclusion is met, then the said allowance would not form part of wages for the purpose of contribution under the

Act. The ceiling limit in so far as salary for the purpose of employer contribution through the EPF scheme is not impacted by this decision. What would be impacted is the contribution that the employee would now be called upon to make in the event of special allowances being considered as part of basic wages on failure to meet the tests laid down by the Apex Court.