E.S.I., P.F., & OTHER INDUSTRIAL LAW

PRACTITIONERS’ASSOCIATION­­  
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Regd Off.:­­­­­­  The Societies Registration Act, 1860. Admin.Off.:

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Borivali (East), Mumbai-400 066. Mumbai 671 / 1995 GBBSD. Behind Sai Dham Temple,

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Date : 08.09.2014

To,

Member

**ONLY FOR PRIVATE CIRCULATION**

Sub :- Enhancement of Statutory wage ceiling to Rs. 15000/- under E.P.F, E.P.S and E.D.L.I

Dear Sir,

In continuation of circular letter dated 30th August 2014, forwarding notification on the subject for your information and compliance, we may like to remind you once again that certain High Courts have held in past various allowances paid to employees under certain circumstances as “Basic Wages” and said matters under dispute are pending before the Honurable Supreme Court of India for final decision and have to await for final outcome.

Further we also add that the Interpretation offered by the “Hon’ble Supreme Court of India” in Bridge Roof and Company vs Union of India in the matter of “Basic Wages” and thereafter in Manipal Academy of Higher Education vs Provident Fund Commissioner 2008 I CLR 1017 in the matter Encashment of Leave are valid as on the date and also the High Courts have also relied the same. All of us have to wait until “Hon’ble Apex Court” delivers further interpretation of “Basic Wages” on allowances. We enclose herewith below gist of above both the important judgements at Annexure ‘A’ and Annexure ‘B’ for your information guidance and await outcome of matters pending before the “Honourable Appex Court”.

Thanking you,

Yours Faithfully,

For EPILPA

(Kanti Pathak)

Chairman

Annexture ‘A’

1. Supreme Court 1963

Bridge and Roofs Co. Ltd

v/s.

Union of India and ors.

“It was held that Production Bonus was an amount of Incentive and would

therefore not be Basic Wages.”

In the case of Bridge & Roof (supra), the Hon’ble Apex Court has, inter alia, clearly held that

various allowances are made as exceptions to the definition of ‘basic wages’. The relevant

portion of the judgement of the Apex Court is reproduced as under:

A. The main question therefore that falls for the decision is as to which of these two rival

contentions is in consonance with section 2(b). There is no doubt that “basic wages” as

defined therein means all emoluments which are earned by an employee while on duty

or on leave with wages in accordance with the terms of contract of employment and

which are paid or payable in cash. If there were no exceptions to this definition, there

would have been no difficulty in holding that production bonus whatever be its nature

would be included within these terms. The difficulty, however, arises because the

definition also provides that certain things will not be included in the term “basic

wages”, and these are contained in three clauses. ………….

B. Then we come to clause (ii). It excludes dearness allowance, 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. This

exception suggests that even though the main part of the definition includes all

emoluments which are earned in accordance with the terms of the contract of

employment, certain payments which are in fact the price of labour and earned in

accordance with the terms of contract of employment are excluded from the main part

of the definition of “basic wages”. ………………… Having excluded “dearness allowance”

from the definition of “basic wages”, section 6 then provides for inclusion of dearness

allowance for purposes of contribution. But that is clearly the result of the specific

provision in section 6 which lays down that contribution shall be 6-1/4 per centum of

the basic wages, dearness allowance and retaining allowance (if any). We must

therefore try to discover some basis for the exclusion in clause (ii) as also the inclusion

of dearness allowance and retaining allowance (if any) in section 6. It seems that the

basis of inclusion in section 6 and exclusion in clause (ii) is that whatever is payable in all

concerns and is earned by all permanent employees is included for the purpose of

contribution under section 6, but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purpose of contribution.

……………….”

Annexure ‘B’

(b) “basic wages” means all emoluments which are earned by an employee while on duty or

1[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

named called paid to an employee on account of a rise in the cost of

living), house-rent allowance, overtime allowance, 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;

NOTES

S.2(b) --- Basic Wages - Encashment Leave - Whether amount received on encashment of

earned leave has to be reckoned as ‘basic wages’ as defined u/s.2(b) of the Act? – Respondent

held it to be part of basic wage – EPF Appellate Tribunal held it not to be part of basic wages –

Single Judge of Karnataka High Court, allowed writ petitions and set aside orders of Tribunal –

Writ Appeals were dismissed – Hence these Appeals – Held that basis of inclusion in S.6 and

exclusion in Cl.(ii), is that whatever is payable in all concerns and is earned by all permanent

employees, is included for the purpose of contribution – But whatever is not payable by all

concerns or may not be earned by all employees of a concern is excluded for the purpose of

contribution – In view of law already settled, basic wage was never intended to include amounts received for leave encashment – hence not wages.

Manipal Academy of Higher Education v. Provident Fund Commissioner 2008 I CLR 1017 (S.C.)