



कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)
EMPLOYEES' PROVIDENT FUND ORGANISATION
(Ministry of Labour & Employment, Govt. of India)
मुख्य कार्यालय / Head Office
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Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi - 110 066.

No.: Coord/4(6)2003/Clarification/Vol-II/

Dated: 23-05-2011

To,

All Addl. CPFCs (Zones)

All RPFCs (In-charge of Regions/Sub-Regions)

Sub: Splitting of Minimum Wages for the purpose of PF contribution not permissible.

Sir,

Attention of all concerned is invited towards this office circular no. Coord./4(6)2003/Clarification/13633 dated 06.06.2008 vide which it was advised **to ensure that P.F. Contributions on at least Minimum Wages are remitted by the establishments. It was also directed to review all such cases disposed of u/s 7A of the Act where determination of dues has taken place on wages lesser than Minimum Wages.**

2. However, it has been observed that still uniform approach in this regard is not followed by all the field offices which is viewed seriously. It is also observed that the field offices are not duly defending the issue in spite of the fact that the Division Bench of Hon'ble High Court, Karnataka in the matter of Group 4 Securities Guarding Ltd Vs. RPFC has categorically upheld the view that RPFCs u/s 7A of the Act can examine and look into the nature of contract entered between the employer and its employees as well as the pay structure to decide whether the pay is being split up under several heads as a subterfuge to avoid PF Contribution.

3. The order of the Division Bench was challenged by the establishment before the Apex Court. While tentatively upholding the order of the Division Bench, the Hon'ble Supreme Court in its order dated 23.07.2004 again granted liberty to the authorities to decide the matter in accordance with law on its merits. As such the authorities have to consider the order of the Division Bench of Hon'ble High Court, Karnataka unless there is substantial evidence to lead otherwise.

4. Accordingly, the matter has been examined in view of the Apex Court's direction and the following guidelines are issued which should be adhered to and followed by all strictly.

5. The EPF & MP Act, 1952 is a beneficial social security legislation. In construing the provisions of the Act, it has already been settled earlier* that where ever two views are reasonably possible, the view which helps the achievement of the object should be preferred and accordingly the assessing authority while determining dues under Section 7A should curb any attempt to curtail the legitimate social security benefits of the employees. It is needless to reiterate the impact of contribution on lesser wages by splitting the wages into different heads, which results in lesser accumulations in PF account and miniscule pension to the member/family.

[*The RPFC, Punjab Vs Shibu Metal Works – 1965 (1) LLJ.473].

6. As you are aware, section 2(b) of EPF & MP Act, 1952 defines the basic wage which excludes all kind of allowances from being considered as basic wage. As the term suggests, 'basic wage' or 'basic salary' is the base salary which is provided to a person in lieu of his services. It is without any allowances which may or may not be added to basic wages in terms of employment.

7. However, it appears that some confusion is prevailing among field offices as to whether basic wages can be lower than the minimum wages or whether an establishment paying minimum wages to its employees can be allowed to split up the wages into various allowances reducing the PF contribution by making it a part of " terms of employment or Contract" .

8. It would be worth to see that the terms 'basic', 'basic wage' and 'minimum wage' are defined in Oxford Dictionary as below:

- (i). "basic. Adj.1. forming an essential foundation; fundamental. 2. consisting of the minimum required or offered"
- (ii). "basic wage . n. 1 a minimum wage earned before additional payments such as overtime. 2. Austral/NZ/ the minimum living wage, as determined by industrial tribunal"
- (iii). "minimum wage, n. the lowest wage permitted by law or by agreement."

9. Thus, whereas the minimum wage is the **lowest permitted wage ought to be paid to a worker as per law** as upheld and revisited on various occasions by the Hon'ble Supreme Court *, basic wage is only relevant for allowing additional allowances by treating it (basic wage) as a basic/floor level.

(*Crown Aluminum Works Vs Workers Union, [1958 Vol.I LLJ, Page I], Unichoyi Vs State of Kerala [1961 Vol.I LLJ P. 631], Kamani Metals & Alloys Ltd. Vs. Their Work Men [1967 Vol.II-55; (1967) 2 SCR Page 463]).

10. Another aspect of basic wage/salary is that it is provided to all classes of employees irrespective of quantum of their salary and its quantum varies with every class/post of an employee where as **minimum wage is prescribed only for the lowest paid employee to whom any lesser payment of wages is not permitted by law.**

11. From above, it is abundantly clear that **basic wage in no case can be lesser than the minimum wage** as the same is not only contrary to law of land but is also beyond logic and rationale that an establishment which can not pay even minimum wages to its employees, would be willing to pay allowances to them and if such instances exist, there is certainly a malafide motive which may be considered as knowingly making or causing to make false statement/representation punishable u/s 14(1) of EPF & MP Act, 1952. It may also attract the provision of section 418 of IPC.

12. Further, it also needs to be kept in mind that any agreement which negates any law of land is ab-initio-void and would have effect of non-existence. Therefore, any such terms of agreement for employment where minimum wages is splitted to reduce the liability under EPF & MP Act, 1952 would be governed by the same logic as it is against the provisions of Minimum Wages Act and hence illegal.

13. Also Minimum Wage being a state matter, clarifications were sought from various state Governments. The replies received reveal that minimum wage is a lump sum composite amount arrived at by following the permissible procedure of fixation as revised from time to time and it can not be segregated and reclassified. Thus the State governments have also observed that splitting of minimum wages is not permissible in the eye of law.

14. Accordingly, all concerned are directed to ensure that P.F. Contributions are not remitted on wages less than Minimum Wages since every employer is legally bound to pay at least minimum wages to his/her employees and **minimum wages are not amenable to split up. It is one pay package.***

[*Civil Appeal 4259 of 1999 Air Freight Ltd. Vs State of Karnataka and Ors., 1999 Supp. (1) SCR 22]

15. It is needless to mention that wherever the matter regarding splitting of wages is challenged or pending in a court of law, the stand

of department along with all rules and guidelines of Hon'ble Supreme Court should be effectively utilized to defend the case. It is also mentioned that nothing said above shall come in way of implementation/execution of any order of a court of law.

16. The assessing officers shall examine full facts about the wage structure, minimum wages prescribed by the appropriate govt. for the relevant class and provide reasonable opportunity to the establishment before deciding the subterfuge, if any.

All the concerned officials/officers are requested to strictly comply with above said guidelines in regard to subject matter.

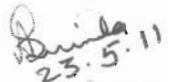
Please acknowledge receipt.

(This issues with the approval of CPFC)


(K.C. Pandey)
Addl. Central P.F. Commissioner(Compliance)

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23.5.11
(Anita S. Dixit)
Regional P.F. Commissioner-I(Coordination)