SPLITTING OF WAGES FOR PAYMENT OF MINIMUM WAGES AND OTHER BENEFITS UNDER THE LABOUR CODES

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Minimum rates of wages were notified by the Government of Punjab vide notification dated 1st May, 2026. What stood out in the notification was, *first*, that minimum wages were fixed/ revised under the Code on Wages, 2019 ("**CoW**", hereinafter) and *second*, that what was notified was the "basic minimum rates of wages". As per the notification itself, the minimum rates of wages notified therein are "basic rates of minimum wages" which are not permitted to be segregated into components in the form of allowances by the employer. Interestingly, neither the CoW nor any other statute permits the appropriate Governments to fix/revise minimum rates of wages such that they cannot be split into wage components other than the basic component.

As per Section 7 of the CoW, the appropriate Government can fix/revise minimum wages in three ways, *first*, as basic rates of wages and special allowance at a rate to be adjusted at such intervals in such manner as the appropriate Government may direct to accord as nearly as practicable with a variation in the cost of living index number applicable to such workers; *alternatively*, it permits the fixation of basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates where so authorised; or in the *alternative*, it permits an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any. It would be profitable to refer to the judgment of the Supreme Court in ***Airfreight Ltd. v. State of Karnataka and Others***[1]. In this judgment, the Court emphasised that once rates of minimum wages are prescribed, whether as all-inclusive or by combining basic plus dearness allowance, are not amenable to split up. It is one pay package. It was further held that in cases where the employer is paying a total sum which is higher than the minimum rates of wages fixed including the cost of living index (VDA), he is not required to pay VDA separately. However, those higher wages should be calculated as per the definition of "wages". Even though this judgment was rendered in the context of the Minimum Wages Act, 1948, its impute still stands tall with respect to the CoW as well.

Therefore, while the Government of Punjab might have not fixed minimum rates of wages as an all-inclusive rate, employers cannot be forced to keep the basic component equivalent to or more than the minimum wage amounts. So long as "wages", as defined under Section 2(y) of the CoW are equivalent to or more than the minimum rates of wages notified by the appropriate Government, there would be no illegality.

Reference is also invited to the judgment of the Supreme Court in ***Assistant Provident Fund Commissioner v. M/s G4S Security Services (India) Ltd. & A***nr.[2]. It was held in this case that

1. *1999 LLR 1008 (SC)*
2. *2023 LLR 1138 (SC)*

whatever payments are to be made under social security legislations should be made as per the definition of "wages" contained therein. While following the said judgment, the Delhi High Court in ***Group 4 Securities Guarding Ltd. v. Secy. Labour, Govt. of NCT of Delhi***,[3] held that if the definition of "wages" in a particular statute regards certain components as inclusions, then wages can be split into those components for the purposes of the payment. Under the CoW, Section 5 specifies that the employer cannot pay to any employee "wages" less than the minimum rate of wages notified by the appropriate Government. Similarly, other benefits such as PF, ESI, statutory bonus, maternity benefits etc., are also to be paid as per the definition of "wages".

If one were to ignore those components which are expressly excluded from the ambit of "wages", such as HRA and conveyance allowance, various components apart from basic pay, dearness allowance and retaining allowance would also form part of "wages", so long as those payments are "remuneration payable under terms of employment". The term "remuneration payable under terms of employment" was also present under the definitions of "wages" of the Employees' State Insurance Act, 1948; Payment of Wages Act, 1936; Minimum Wages Act, 1948; Industrial Disputes Act, 1947; and the Payment of Bonus Act, 1965. It would be imperative, in this milieu, to understand how the judiciary has interpreted this term. In an old judgment of ***Nutan Mills v. Employees State Insurance Corporation***,[4] the Bombay High Court had pointed out that the expression "if the terms of the contract of employment, express or implied, were fulfilled" means that there should be a subsisting contract of employment and that the relationship of master and servant should exist and there should be mutual rights and obligations of the parties to the contract existing. It was, in the same breath, stated that if in fact no services are rendered and if in fact there is no obligation upon the employee to render services, then whatever else the payment by the employer maybe it would not be remuneration. Further, under this definition the payment must be made as a result of the terms of the contract being fulfilled, and if the payment is made when the terms of the contract are not fulfilled then clearly the payment would not satisfy this definition. In ***Braithwaite & Co. v. E.S.I. Corporation***,[5] the Supreme Court had held that if there is a mention of any payment in of the original contract of employment, then such a payment would fall under the ambit of "terms of employment".

Not only this, if a payment is being made consistently and for a long time to the employees, it would be considered as an implied term of employment and would thus be "wages" [See, ***Laxmi Vishnu Textile Mills Ltd. v. Abdul Azz Imamsaheb Sutar***[6]]. Therefore, the definition would take under its sweep all remuneration paid or payable under the terms of the contract of employment, even though it may not be the part of the terms of contract of employment at the inception. Remuneration, in effect and substance, is a return for the services rendered. It is not necessary that payment in order to partake the characteristic of remuneration should be paid instantaneously. [See, ***Employees' State Insurance Corporation v. New Asarwa Manufacturing Company Ltd.***[7]].

From the above judicial dicta, it can be culled out that following remuneration would be included under the ambit of this part of the definition:

1. If the same is provided under the terms of employment i.e. in the appointment letter or service conditions.

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3. *2024 LLR WEB 210 (Del. HC)*
4. *1956 (1) LLJ 215 (Bom. HC).*
5. *1968 I LLJ 550 (SC).*
6. *1998 (2) LLJ 109 (Bom. HC).*
7. *1983 (2) LLN 861 (Guj. HC).*

2. If it is not explicitly mentioned in the appointment letter or service conditions but has been paid for a long time. It would then assume the characteristic of implied term of employment.
3. In case of a scheme of payment (such as incentives) which is voluntarily introduced by the employer and can be withdrawn at any time without assigning any reason, the same would not be "remuneration" under terms of employment.

Thus, if the employer is paying 'special allowances", "other allowances" or such similarly worded allowances monthly, and the philosophy or impute behind their payment is not linked to any of the exclusions, such payments would form part of "wages".

Can wages be bifurcated/split into the exclusions for the purposes of payment of minimum wages?

Certain components, including conveyance allowance/travelling concession, HRA, remuneration payable under any award or settlement between the parties or order of a court or Tribunal, and overtime allowance are excluded from the ambit of the definition of "wages". But, the second proviso to the definition states that these components will be taken for computation of wages for the purpose of equal wages to all genders and for the purposes of payment of wages. While certain persons are interpreting the second proviso to be only relevant for the purposes of equal remuneration to all genders, the conspicuous use of the word "and" would suggest otherwise. It is a well settled principle of law that the term "and" is conjunctive [See, ***Krishna Shri. Gupta v. State of U.P. Through Secretary, Department of Education (Secondary) and Other***[8]]. Since these payments are "inclusions" for the purposes of "payment of wages", they would invariably be inclusions for the purposes of payment of "minimum wages" as well. This interpretation is further bolstered by the fact that the second proviso merely states these components will be taken for computation of wages "for the purpose of equal wages to all genders" and "for the purpose of payment of wages". The said proviso nowhere states that these components will be considered as wages for the purposes of a specific chapter, such as Chapter III in the case of payment of wages. Therefore, one can argue that minimum wages may split into HRA and conveyance allowance, apart from other included components.

The conspectus of the above discussion is as follows:

1. Employers cannot be forced to keep the basic component equivalent to or more than the minimum wage amounts.
2. So long as "wages", as defined under the Codes, are equivalent or more than the minimum rates of wages notified by the appropriate Government, there would be no illegality.
3. If the employer is paying 'special allowances", "other allowances" or such similarly worded allowances monthly, and the philosophy or impute behind their payment is not linked to any of the exclusions, such payments would form part of "wages".
4. If the second proviso to the definition of "wages" is to be interpreted literally, minimum wages may split into HRA and conveyance allowance, apart from other included components.

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8. 2020 ALR (141) 333 (All. HC).