

Query:

Whether DA / Special allowance should be a mandatory component of wages structure?

Response:

Whenever, we discuss about complying with Minimum Wages, the question that normally arise would be the components that form part of Minimum Wages. The States like Maharashtra, Karnataka and Tamil Nadu, fix the basic rates for each Scheduled Employment and also they fix Dearness Allowance as a separate component and revises it periodically.

Since the Dearness Allowance is revised and notified separately in such States, some enforcement Authorities insist the employers to include the Dearness Allowance/Special Allowance in the wages structure of each employee. This is being insisted, even in a company where the Basic Salary is fixed equivalent to or more than the Minimum Wages.

Now, the question to be decided is as to whether the Dearness Allowance/Special Allowance is to be a mandatory component should that form a part of the wages structure?

The term 'wages' is defined in Sec. 2(h) of the Minimum Wages Act as below:

“wages means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include—

(i) the value of

(a) any house accommodation, supply of light, water, medical attendance, or

(b) Any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) Any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) Any travelling allowance or the value of any travelling concession;

(iv) Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) Any gratuity payable on discharge;”

To determine whether the Minimum Wages were paid or not, the amount paid for the value of items which are excluded in the definition of the term 'wages' under sec 2(h) of the Act are not to be taken into consideration. The amount paid towards the following are thus excluded:

- i. The value of any house accommodation, supply of light, water, medical care, or other amenity or any service excluded by general or special order of the appropriate government;

- ii. Any pension fund or provident fund or under any scheme of social insurance;
- iii. Any travelling allowance or the value of any travelling concession;
- iv. Any sum paid to any person employed to defray special expenses entailed on him by the nature of his employment or
- v. Any gratuity payable on discharge.

Hence, if the aggregate of Basic and other monthly components (including HRA and excluding the components mentioned above) is more than or equivalent to the Minimum Rates Of Wages, the same can be considered as a sufficient compliance for the purpose of the minimum wages Act as held by the Honorable Supreme Court in the case of *Airfreight Vs State of Karnataka and others* and also it was construed and clarified that the Dearness Allowance need not be a part of the wages structure.

Despite the above judgment, in practice few Enforcement Authorities continue to insist to introduce Dearness Allowance/Special Allowance in the wage structure.

At this back drop, recently the Bombay High court in the case of *M/s Polypharma Pvt. Ltd vs Shri Rangnath S. Iyer (2017 LLR 343 Bom. HC)* has reconfirmed the above position that the Special Allowance is not a mandatory component to be introduced in the wages structure of employees, provided if the aggregate of Basic and other monthly components (including HRA and excluding the components which are specifically excluded in the definition) is more than or equivalent to the Minimum Rates Of 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' (and HRA in Maharashtra and West Bengal). Therefore it is for the management to derive a salary structure for their employees. The number of components one company can have can also be decided by its management, of course if required, in consultation with the trade union. Dear Allowance or the Special allowance is not mandatory component to be part of salary structure.

Note: We have analyzed only about the introduction of DA or Special Allowance in the Wages Structure in the above discussion. However, our stand on the quantum of Basic Salary or Basic + DA (wherever DA is paid) is that, it should be equivalent to or more than the Minimum Wages, which remains the same.