



RKM MADIRAJU ASSOCIATES
Advocates & Corporate Legal Consultants
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PRINCIPLES OF MY ADVOCACY

- ❖ I am proud to enter into a noble profession of Law - I am thankful to God for my timely selection.*
- ❖ I am not that Lawyer whose learning is for earning - I am but that Lawyer whose earning is for serving.*
- ❖ I am not that Lawyer who poses to be busy - I am but that Lawyer who has access easy.*
- ❖ I am not that Lawyer who Says 'I am dispenser of Justice' - I am but that Lawyer who says 'God is Chief Justice'*
- ❖ I am not that Lawyer to whom 'Money is God' - I am but that Lawyer to whom 'Truth is God'.*
- ❖ I am not that Lawyer who is eager for his fees - I am but that Lawyer who is eager for justice.*
- ❖ I am not that Lawyer who has arrogance and pride - I am but that Lawyer who is a humane and kind.*

--- M. RADHA KRISHNA MURTHY, Lawyer

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**Mitigation of litigation
because
litigation is a speculation
without knowing the destination**

BRIEF PROFILE OF M. RADHA KRISHNA MURTY



- ***Practicing as an advocate in High Court of Andhra Pradesh & Telangana States, both original and appellate jurisdiction and as a corporate legal consultant / advisor since 1987.***
- ***Practicing in the areas of Industrial & Labor & Employment and Corporate Legal Matters, etc.***
- ***Core competency in Industrial, Labor and Employment Laws with Strategic IR & HR Management and Planning.***
- ***Recommending and correcting potential trouble spots in personnel and human resource policies and practices, Comprehensive Statutory Compliance of Labor and Employment Laws.***
- ***Former Regional Board Governing Body Member of the ESI.***
- ***Member – A.P. Minimum Wages Board Rationalization Committee Representing Employers***
- ***Member of IR & HR committee of Federation of Telangana and Andhra Pradesh Chambers of Commerce & Industry (FTAPCCI).***
- ***Life Member of A.P High court Advocates Association.***
- ***Life Member of National HRD Network***
- ***Guest faculty for some of the Management Institutions.***
- ***Delivered several lectures on Industrial and Labor Laws, in the seminars conducted by the FTAPCCI, NHRD, SHRM and in-house training programs of some of the corporate (i.e. in Deloitte, CoMakeIT, RAMKY Group, Voltas, etc.,).***

The Team:-



Mr. M. RADHA KRISHNA MURTHY

a HR executive turned Lawyer, and practicing law since 1987 in the areas of Labour and Employment Laws.

Mr. G. ANANDAM

practicing since 1987 in the areas of Civil and company matters (both Original and Appellate Jurisdiction).

Mr. K. PINAKAPANI

practicing since 1995 before the labour court / tribunal and quasi-judicial authorities under various labour laws

Mrs. M. BHRAMARA

practicing since 2003 before the High Court of Andhra Pradesh.

Mrs.A.S. RAVIA BEGUM,

Practicing at the High Court of Telangana.

Our Services:-

End to end solutions and guidance / consultancy in the following areas with the object of prevention of litigation and industrial disputes;



- **Strategic I.R & H.R. Management and Planning.**
- **Recommending and correcting potential trouble spots in personnel and human resource policies and practices, Industrial / employee relations,**
- **Statutory compliance prescribed under various employment and labour laws,**
- **Disciplinary procedures, drafting of charge sheets, termination letters, promotions, suspensions, transfers, etc**
- **drafting, vetting and documentation pertaining to employment, right from recruitment to exit of employment, such as appointment letters, service agreements, non-disclosure agreements, standing orders, Industrial Relation Policy, Code of Conduct and discipline Rules, policy for engagement of contract labor/outsourcing of employment.**
- **Strategies for the long term wage settlements and drafting of the same.**

- ***Categorization of employment, optimum utilization of man-power and machinery,***
- ***Good working practices in the shop floor,***
- ***Labour/Trade union management with the object of inculcation of positive attitude among the workmen, and their commitment to achieve the objectives/goals of the company.***
- ***Institution and defending of cases on behalf of the employer before Labour Courts, Industrial Tribunals, Authorities under Payment of Wages Act, Minimum Wages Act, Gratuity Act, Employee's Compensation Act, Shops and Establishments Act, High Courts, etc.***
- ***Online legal services to provide opinions, agreements, bonds, and any documentation pertaining to employment right from entry to exit level of employment of employees/workmen.***

OUR CLIENTS (to name a few) :-



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**INTERACTIVE SESSION ON
LATEST JUDGMENT OF SUPREME COURT, ITS IMPACT,
CONSEQUENCES AND STRATEGIES FOR CORRECTION ON EPS
AND SPLITTING OF WAGES INTO ALLOWANCES AND
COMPLETE ANALYSIS ON : THE BASIC WAGES CONUNDRUM
UNDER THE EPF ACT**

23RD MARCH 2019

**RADHA KRISHNA MURTHY MADIRAJU
Advocate & Corporate Legal Consultant
&
RAVIA BEGUM,
Advocate , High Court of Telangana**

The point frame for discussions and deliberation are as under:

- **Salary components for PF contribution**
- **Splitting of minimum wages for PF contribution**
- **Impact of the judgment–International workers**
- **Judgment-Prospective or retrospective**
- **Restructuring process**
- **Way forward**

Definition of “**Basic Wages**” under EPF Act

“Section 2(b) of the EPF Act defines the term basic wage –

‘basic wage’ means 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 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 name called paid to an employee on account of a rise in cost of living), house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his or of work done in such employment.

(iii) **any presents** made by the employer.”

No material was placed on record by the employers to demonstrate that the allowances being paid to employees were:

- Variable; or**
- Linked to any incentive for production resulting in greater output by an employee; or**
- Not paid across the board to all employees in a particular category; or**
- Being paid especially to those who avail the opportunity.**

If the establishment is paying only the minimum wages as prescribed by the Appropriate Government, there is no need for restructuring the wages consequent to the Supreme Court judgment. The PF contribution should be made on the minimum wages as prescribed by the Appropriate Government.

- **If the establishment is paying over and above the minimum wages, their structuring will be necessary in case of those employees whose basic wages + DA/VDA wherever payable, is less than Rs.15,000/-p.m.**
- **In such cases, the minimum wages as fixed by the Appropriate Government should be retained. The amount over and above the minimum wages may be paid as allowances, which would not attract EPF contribution in terms of the judgment.**

Components which attract PF consequent to the Interpretation of SC Judgment

The definition of basic wages defined under the Act has been subject matter of Judicial Interpretation by the different High Courts and Supreme Court. Examples are stated below.

S.No.	Wage components	Coverage	Basis
1	Basic wages or basic pay	Included	Section 2(b)
2	Dearness Allowance	Included	Section 6 and para 29

SL. NO.	Wage components	Coverage	Basis
	Special pay or special allowance	Included	
4	Wages during leave	Included	Being contract of employment
5	Wages during rest or holiday	Included	Being contract of employment
6	Cash value of food concession	Included (from basic wage)	Para29

SL. NO.	Wage components	Coverage	Basis
7	Free/food tiffin allowance	Included	
8	City compensatory allowance	Included	
9	Retaining allowance/retention allowance	Included	Sec.6 and para29
10	Subsistence allowance	Included	Analogy of ESIC case rendered in popular automobile is adopted (1997 AIR (SC) 3956)

SL. NO.	Wage components	Coverage	Basis
11	Maternity Leavesalary	Included	Since wages on leave included.
12	Night shift allowance or Night allowance	Included	
13	Canteen Allowance	Included	
14	Good work reward	Included	D.C.M.,ShriramConsolidatedLtd.,V.TheRegionalProvidentFundCommissioner,2004IILLJ396(Raj.DB)

SL. NO.	Wage components	Coverage	Basis
15	Educational allowance	Included	
16	Medical/Sickness allowance	Included unless paid as reimbursement on production of bills.	Medical/Sickness allowance
17	Layoff compensation	Included	
18	Ex-gratia adhoc payment paid every month	Included	

SL. NO.	Wage components	Coverage	Basis
19	HouseRent Allowance	Excluded	
20	Overtime allowance	Excluded	Sec.2(b)(ii)
21	Leave encashment	Excluded	Manipal Academy of Higher Education V.Provident Fund Commissioner,2008IILLJ66 6(S.C.2J)
22	Statutory Bonus	Excluded	Sec.2(b)(ii)

SL. NO.	Wage components	Coverage	Basis
23	Production or incentive bonus	Excluded	T.I.Cycles of India,Ambatuur,Chennai V. M.K.Gurumani&Ors.,2001II LLJ1068(S.C.2J)
24	Service charges collected from customers and paid to employer	Excluded	The Rambagh Palace Hotel, Jaipur V Rajasthan Hotel Worker sUnion, Jaipur ,1977(34)FLR12(S.C.3J)
25	Notice pay in lieu of termination	Excluded	India United Mills Ltd. V. RPFC,1959 II LLJ 733(BomHC)
26	One month wage u/s33(2)(b) of Industrial Disputes Act	Excluded	Dinesh Khare V. Industrial Tribunal,1982 II LLJ 17(Raj.HC)

**The judgment merely interprets the law
or section**

**Hence, the meaning assigned will have
the effect as if it is from 1st day of the
statute.**

**In the latest judgment in
Vivekanand Vidya Mandir case the
Supreme Court has reiterated the
Bridge and Roof case
(AIR1963SC1474). Therefore, the
judgment has retrospective effect.**

- By recklessly splitting the wages, the Employers are caught in the dragnet of PF Authorities.
- Judgment should be taken by the Employers as a wakeup call
- It is time to restructure the salary to be in tune with the SC Judgment
- Where only minimum wages is paid, contribution be made on minimum wages.

- Keep in view the judgment of SC while concluding settlement on Charter of Demands
- Even in case of existing terms of settlement restructure the components after discussing with the workmen/trade union
- While fixing salary for fresh recruits avoid too many allowances and restrict to Basic, VDA, HRA and performance allowance.

THANK YOU

Thank you!

Any questions?

You can find me at:

- **Website:**

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