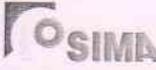




Coordination Group of
Silvassa Industries Association, Silvassa



DNH Industries Association, Silvassa



Silvassa Industries and Manufacturers Association, Silvassa

To,

The Labour Commissioner,
Labour Department
D&NH Administration
SILVASSA

Subject : Clarification on the Basic wages mentioned in the Notification dated 18.08.2015.

Sir,

There is tremendous confusion among the workers and employers prevailing over the issue of basic wages in the minimum wages notified by the Administration on 18.08.2015.

In this representation, we submit a case for unskilled category, which will equally applicable on other categories..

The notification notified wages for unskilled category as under:

Basic Wages ; Rs 268.00

Special Allowance : Rs. 0.20

Total : Rs 268.20

There is insistence from the workers side in many organizations that their basic wage now cannot be fixed at any amount less than Rs 268/- because Rs. 268/- has been notified as basic wages in the notification.

We have got the matter examined.

The definition of wages as per sec 2 (h) of the Minimum Wages Act, 1948 says as under:

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“(h) "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 person fund or provident fund or under any scheme of social insurance;

(iii) any traveling allowance or the value of any traveling 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;

It means that when actual wages paid will be compared with the wages notified by the Administration under MWA, all emoluments including HRA and other allowances except (i) to (v) exclusions mentioned the definition will be taken into account. For example an organization pays as under

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Basic Wages :	Rs 140
HRA :	Rs 129
Total	Rs 169

In the example, the organization meets the requirement of MWA. In this connection, we enclose a supreme court judgment in Airfreight Pvt Limited case, where it was held that component wise comparison is not warranted under the Act. Hon'ble Supreme Court held that:

"It is thus clear that the concept of minimum wages does take in the factor of prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralising the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index is provided for in Section 4 but V.D.A. is part and parcel of wages. Once rates of minimum wages are prescribed under the Act, whether as all inclusive under Section 4(1)(iii) or by combining basic plus dearness allowance under Section 4(1)(i) are not amenable to split up. It is one pay package. Neither the scheme nor any provision of the Act provides that the rates of minimum wages are to be split up on the basis of the cost of each necessities taken into consideration for fixing the same. Hence, in cases where employer is paying total sum which is higher than minimum rates of wages fixed under the Act including the cost of living index (VDA), he is not required to pay VDA separately. However, that higher wages should be calculated as defined in Section 2(h) of the Act. Section 2(h) specifically provides that value of the following items are not required to be computed for finding out whether employer pays minimum wages as prescribed under the Act:

(i) the value of any house, accommodation, supply of light, water, medical care, or any other amenity or any service excluded by general or special order of the appropriate Government.

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- (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 curtailed on him by the nature of his employment or
(v) any gratuities payable on discharge."

Copy of the judgment as drawn from Indiantkanoon.org is attached for ready reference.

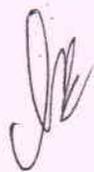
Thus, we request a clarification from the Administration that minimum wages is total of basic wages and special allowances notified by the Administration and when ensuring whether employers are paying minimum wages or not, total of wages and allowances (except exclusions mentioned in clause (i) to (v) below sec 2 (h) of the MWA by the employer will be considered.

We also draw your attention towards the PF department's insistence of to keep the basic wages less than minimum wages. They had issued a circular dated 23.05.11. A copy is enclosed for ready reference. This circular was challenged before Delhi High Court. Hon'ble Delhi High Court had stayed the operation of said circular on 30.08.2011. PF department again issued the circular dated 27.09.11 that their circular dated 23.05.11 has been kept in abeyance. Thus entire controversy from the PF point of view is also under judicial scrutiny.

Since PF matters are to be dealt by the PF department, enforcement of minimum wages should be confined to the Minimum Wages Act, only.

For MWA, things are crystal clear and a clarification is needed to remove the clouds of confusion and ambiguity.

In the clarification, we request that Administration should make it clear that total of basic wages and special allowance mentioned in the Notification should be compared with total of wages and



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allowances paid by the employer as mentioned under sec 2 (h) of the Act, and, not basic with basic and Special Allowance with allowances.

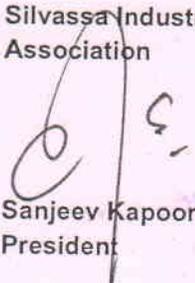
We are sure that requested clarification would be issued soon in the interest of industrial peace.

Thanking you.

Yours faithfully,

For

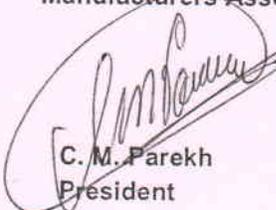
**Silvassa Industries
Association**


Sanjeev Kapoor
President

**DNH Industries
Association**


Ajit Yadav
President

**Silvassa Industries and
Manufacturers Association**


C. M. Parekh
President

Encl :

1. Hon'ble Supreme Court Ruling in the Airfreight Ltd. vs State Of Karnataka & Ors. on 4 August, 1999, AIR 1999 SC 2459,
2. PF Department's circular dated 23.05.11
3. PF Department's circular dated 27.09.11