

INDIAN SOCIAL SECURITY - SUPREME COURT RULES THAT UNIVERSAL ALLOWANCES ARE PART OF BASIC WAGES

By -

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The Supreme Court has held that all universal allowances should be treated as part of 'basic wages', and hence should be subject to PF contributions.

In a long-awaited ruling, the Supreme Court has vide order dated 28 February 2019, taken the view that universally paid allowances would be treated as part of 'basic wages' for the purpose of provident fund (PF) payments. This common order was passed in relation to several appeals on this issue that were pending before the Supreme Court, in the cases of Surya Roshni Ltd., etc. This ruling can have a significant financial impact on certain organisations, since it lays to rest a long-standing controversy as to which components of pay are amenable to PF contributions. Organisations are required to deposit 12% of an employee's basic wages, dearness allowance and retaining allowance towards PF, and employees make an equal contribution through a payroll deduction.

In essence, the Supreme Court has upheld the principles laid out in the earlier case of Bridge and Roof Co. (India) Ltd. vs. Union of India. The Bridge and Roof case had observed that all universal allowances should be treated as part of 'basic wages', and hence should be subject to PF contributions.

This judgment gives the provident fund department renewed strength to scrutinize the allowances in an employee's salary and determine if any of those should be treated as 'basic wages' for the purpose of PF contributions. Since this ruling is only clarifying a position of law, it can be relied on by the PF department in conducting assessments for both future and past periods. In other words, this ruling does not have prospective¹ application only.

In the event any organization is found to have contributed PF in previous years only on the 'basic salary' and not on other guaranteed allowances (like special allowance, which is a common component in the pay of many organizations), and if such basic salary is lower than INR 15,000 per month, the PF department can demand that PF be contributed on other guaranteed and universal allowances as well, in arrears, up to the limit of INR 1800 per month (applicable to domestic employees), assuming the organization has an EDLI exemption. Apart from making arrear payments for the employer's portion, the organization will also be liable to pay the employee's contribution out of its own pocket. The organization will also be liable to bear interest of 12% and a penalty that may go up to 25% on the arrear payments.

In relation to disputes that are already pending, several organisations had obtained stay orders against adverse proceedings on this issue, due to the pendency of this matter before the Supreme Court. Now that protection will no longer apply. This ruling would also have an adverse impact on the appeals on this issue, that are already pending before the Central Government Industrial Tribunal (CGIT).

¹ We understand however the industry bodies like the CII have written to the government, requesting that the provident fund department apply this ruling prospectively only.

Therefore, organisations should take immediate note of this ruling and carry out a scrutiny of its pay structure and PF contribution practices, especially for employees whose basic salary is below INR 15,000 at present and also for International Workers (for whom PF contribution caps don't apply).

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About the Author



Atul Gupta is a Partner in Trilegal since 2015 and been with the firm since 2006 in the Corporate Practice Group. He is a senior partner in the Employment practice, which he helped establish, and which he is slated to head.

Over the years, Atul has firmly established his credentials as a leading authority and thought leader on Indian labour and employment laws. His views on key developments have featured in major newspapers and are sought by major industry and trade bodies like the CII, NASSCOM, IFCCI, etc. Atul has recently been personally invited by the Central Provident Fund Commissioner (who heads India's largest social security and pension fund) to advise the Employees' Provident Fund Organization on various key changes to Indian social security laws, and has also provided his views extensively to help shape other policy and legislative measures. He recently helped write draft crèche related rules for submission to the Karnataka government and other State governments through the CII and NASSCOM.

Atul focuses his practice on advising clients on high stakes employment law issues – both on the contentious and non-contentious side - including senior management terminations, large scale reductions-in-force and establishment closures, M&A/outsourcing/insourcing transactions with significant employee movements, representation before Provident Fund and other regulatory authorities in large value adversarial assessments, bespoke compensation and benefits structuring, employment disputes and litigation, as well as investigations and inquiries arising from employee misconduct/white-collar crime (including those relating to workplace and sexual harassment). He also handholds clients on a wider range on advisory matters, such as structuring of employment contracts and policies, issues relating to privacy and intellectual property protection, hiring of expats and secondment agreements, preparation of wage and other settlements, voluntary retirement schemes, etc.

Atul and his team have successfully established Trilegal's credentials in the space of 'industrial relations', by effectively handling several mandates involving complex trade union dynamics and disputes. Atul has also established strong and impressive credentials in the firm's white-collar practice and handles several complex and sensitive investigative mandates every year.

Atul is the lawyer of choice for several major international and domestic clients, who bank on his in-depth experience, rigour, responsiveness and authority in handling their complex labour and employment matters. Atul is also the preferred partner on large corporate transactions with a significant human capital element, as he successfully merges his employment law expertise with a corporate law background to provide clients with practical and commercial advice on the most effective strategies to deal with employee and benefits transfers and integration.

Atul has been ranked as '**Band 3**' by Chambers in 2018 & 2019 and has been recognized as a leading lawyer by Chambers Asia Pacific 2014, 2015, 2016 and 2017 guides. [Chambers research](#) cites, Atul Gupta '*combines specialised employment expertise with an extensive familiarity with corporate and foreign exchange law, equipping him well to handle the employment aspects of cross-border M&A transactions. Areas where he offers particularly expert knowledge include employment contract and benefits structuring, secondment arrangements and outsourcing transactions*'. In addition, he has also been praised as: *The "brilliant" Atul Gupta is applauded by sources for his commercial awareness and practical approach. He has advised a diverse group of companies on Indian employment law matters.*