WHAT SPECIAL EXPENSE COMPONENTS ARE EXCLUDED FROM THE DEFINITION OF "WAGES" UNDER THE LABOUR CODES?

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The definition of "wages" under the Labour Codes explicitly excludes "any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment". The Payment of Wages Act, 1936, Minimum Wages Act, 1948 and the Employees' State Insurance Act, 1948 ("**ESI Act**") also had the said component excluded from the ambit of "wages". Some illustrations are as follows:

Washing Allowance: With reference to the said exclusion under the ESI Act, it had been held that washing allowance was paid only for defraying the expenses of washing of dresses or clothes used by each of the workers when they attend the work. Such allowance would be a sum paid to the employee employed by employer to defray special expenses entailed on employee by the nature of his employment in the employer's establishment[1].

Meal Allowances: In one case, meals allowances were paid to employees to meet the need to refresh the human body by solid food during working hours. The same was to accomplish this object that the workmen shall be given intervals during working hours to take food. The circumstances under which this allowance was paid made it clear that the employer wanted to get himself exonerated from the responsibility of the employees being provided with the canteen facilities immediately. The Court thus held that such payment being in the nature of special expenses cannot be treated as "wages" under the ESI Act[2].

In ***E.S.I Corporation v. Enfield India Ltd.***[3]**,** a learned Judge of the Madras High Court had held that the amounts paid by way of allowance towards Tea, Milk and Egg to the employees by the employer cannot be considered as wages of the definition of "wages" under the ESI Act. Generally, Tiffin allowance will have to be construed as a sum paid to the employee to defray the free special expenses and as such, the tiffin expenses cannot be considered as part of the wages.

However, in another judgment of the Madras High Court, it has been held that

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1. Graphite India, Ltd. v. Employees' State Insurance Corporation, 1992 (1) LLN 803 (Karn. HC).

2. Malabar Fruit Products Company v. Employees' State Insurance Corporation and Another, 1991 LLR 810 (Ker. HC).

3. 1994 LIC 2507.

the term “special expenses” would not include payment given to the employee to defray tiffin and the meals expenses.[4] Also, if any sum is paid for defraying any expenses towards food as and when the driver will go outside of the city then it may not form part of the wages.[5]

Terrain Allowance: With respect to the Minimum Wages Act, it was held that when the employer is duty bound to pay special expenses to defray the necessary expenses entailed, then Terrain Allowances cannot be a part of the minimum wages.[6]

Shift Allowance and Canteen Expenses: These are special expenses to meet out the workers’ special expenditure warranted by the nature of their duty[7].

Tea allowance: A mug-full of tea was provided to every worker coming and attending to work in the establishment. This was later quantified in terms of money for the workers, being dissatisfied with the quality of tea, wished to make arrangements of their own. Tea as a beverage, besides being a stimulant, is a source of refreshment. In institutions, private as well as governmental, wherever a sizeable number of people work, provision of tea shops and canteens have been seen to be operating, whether private or institutional. The need to refresh the human body by solid food or by liquids is even recognised when providing intervals for the purpose during working hours. The provision of tea allowance to the employee, which is actually expended or supposedly expended on his reporting to duty, entailed by the employee by the nature of his employment in the establishment, and being in the nature of special expense, needs defrayment and the allowance takes the shape of the sum paid in that regard[8].

Running allowance: The nature of the payment of daily allowance to the “running staff” shows that it is intended to be paid for special kind of work and for enabling the employee to meet the expenses occasioned by such work. The employee does not receive the allowance when he performs his normal duty which excludes travelling assignments. In other words, the “nature of the employment” in this case, is travelling assignment involving expenses incidental to the fulfilment of such assignments. This characteristic of the payment is underscored by the fact that when he is not on travelling duty, he does not receive the allowance, and such allowance is paid in addition to his normal wages. For all these reasons the sums payable to the running staff as daily *bhatta* or allowance while on travelling

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4. *Employees State Insurance Co v. M/s. Sri Matha Spinning Mills, CMA(MD).330/2020 dated 26.07.2023 (Mad. HC).*

5. *Shakuntala and Others v. Kanna Dangi and Others, 2007 AIR MP 237 (MP HC).*

6. *Parry Agro Industries Limited v. The Deputy Commissioner, 2022 (172) FLR 1031 (Mad. HC).*

7. *Arasu Pokkuvarathu Madurai v. The Additional Chief Secretary & Chairman of State Transport Undertakings & Ors., W.P.(MD) No.14216/2019 dated 17.11.2023 (Mad HC).*

8. *Employees’ State Insurance Corportion v. M/s Gedore Tools India (P) Ltd., 1987 (1) LLN 653 (P&H HC).*

duty, is excluded from the definition of "wages".[9]

Uniform and utility allowances: Uniform and utility allowances were paid to security guards of an establishment every month at uniform rates. However, the statutory registers and other records maintained by the establishment were not produced before the court below to prove that such allowances are paid to defray such special expenses. The matter was, therefore, remanded to be considered afresh.[10]

With respect to washing and maintaining allowance for security guard's uniform, the Court observed that it is the duty of the employer to afford them safety and protection, in the performance of their duty by making them well equipped suitably to meet any contingency and they are not expected to spend money for the same from their pocket. Thus, equipment allowance is given to meet such recurring expenses incurred owing to the nature of their employment. The Court further went on to hold that so long as such inspection forms a part of their official duty, it is incumbent on the employer to meet such expenses and if the employee is paid for meeting such expenses, it can never be treated as wages or salary of the employee, more so because an employee is not expected to do his duty spending money from his pocket. Thus, amount paid as uniform wash/ maintenance cost, inspection expenses and special equipment cost are the amount paid considering the nature of their employment to defray special expenses incur for discharging their duty.[11] However, mere oral evidence would not make the Court reach to the conclusion that, uniform allowance, utility allowance and other allowances are payments made to defray special expenses incurred by the security guards, in view of the peculiar nature of their employment, and such payments are excluded from the purview of 'wages'. The establishment will have to produce statutory registers and other records, in support of its claim for exclusion.[12]

Bhatta paid to driver: Any amount paid to the driver as any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment, would not be included in the definition of 'wages'. Therefore, any *bhatta* or daily allowance that is paid to the driver under any special contract as additional remuneration or as daily allowance may be considered as part of the wages but if any sum is paid for defraying any expenses towards food as and when the driver will go outside the city then it may not form part of the wages.[13]

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9. Reg. Director E.S.I Corpn. v. K.P Vinod, 1991 FLR 63 563 (Ker HC).

10. The Regional Director Est Corporation v. Uno Security Services, Ins. APP No. 43/2010 dated 10.05.2016 (Ker. HC).

11. Regional Director v. Taurus Security Services, 2018 (1) LLJ 442 (Ker. HC).

12. The Regional Director ESI Corporation v. UNO Security Services, Ins. App. No. 43/2010 dated 17.05.2016 (Ker. HC).

13. Basantabai and Another v. Shamim Bee and Another, 2011 SCC Online MP 2203 (MP HC).