



RIGHTS OF EMPLOYEES, EMPLOYER IN REFERENCE WITH MINIMUM WAGES ACT, 1948

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ABSTRACT

The importance of awareness brings us to highlight the important aspect of an employee who works day and night to get his salary. While many are there getting a good chunk; rest are not even getting their basic dues. The world has a sharp contrast between these two categories and the awareness of the rights and duties will ensure in reducing the differences and lighting up a bulb at a place where there remained darkness till date. Justice doesn't come easy; for when it comes takes away all the worries and brings hope for all the more positive vibes. The basic necessities are essential and thereby no one shall be deprived of the same and the minimum wages are the basic essential which shall be paid and not to be denied in any sense by the employer. The importance of wages in the life of labourers cannot be foreseen by rich class and how each penny acts as a bonus for them. There is a big role of government and the committee in ensuring no employee is devoid of any kind of justice in any form and everyone shall be treated equally and the concept of welfare state is promoted keeping in mind the welfare of everyone. The essay tries to explain the hardships faced by employees, the exploitation by the employers and the rights which may bring a change in the society.

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INTRODUCTION

The minimum wage stands for the basic wage to be provided by the employer to the employee in lieu to fulfill his basic necessities and thus earn a livelihood to survive. The Minimum Wages Act, 1948, provides for fixing minimum rate of wages in certain employments. Any employee who has been refused minimum wages by the employer fixed under the Act has the right to make a complaint either by himself or through the prescribed agents to the authority mentioned in the Act.² It is an act of parliament concerning Indian Labour Law that sets minimum wages that must be paid to skilled and unskilled labour. The Supreme Court in *Express Newspaper V. Union of India*³ classified minimum wages as one which can only provide for a bare subsistence. The securing of minimum wages to labourers not only ensures bare subsistence but also maintenance of health and decency which is a DPSP under Article 43 of the constitution.⁴ It is very essential to be provided with basic minimal facilities and earn a livelihood. To subsist is to live in this world, with bare basic essentials without any fancy materialistic objects. Minimum wage rates are determined by factors such as poverty, threshold, prevailing wage rates as determined by the labour force survey and socio economic indicators which insures better workers protection.

OBJECTIVE BEHIND SETTING UP MINIMUM WAGES

The object of the act is to prevent exploitation of the workers, and for that purpose the act aims at fixation of minimum wages which the employers must pay.⁵ There is a need to follow and respect this legislation in the nation; if not followed shall invite penalties and legal repercussions. The legislature intends to apply these provisions to those industries or localities in the areas of unorganised labour.⁶ We often see the labourers employed in the unorganised sector suffer the most, thereby causing damage to their own family as being unaware of their rights. Article 14 forbids class legislation but does not prohibit reasonable classification for the purpose of legislation.⁷ The minimum wages shall be fixed for overtime work and shall be paid accordingly and to be double of what ordinarily be the minimum wages for a fact respecting

² *Pabbojan Tea Co. Ltd. v. Dy. Commr.*, [1968] 1 SCR 260

³ [1958] AIR 578 (SC)

⁴ *Bijay Cotton Mills Ltd. V. State of Ajmer*, [1955] 1 SCR 752

⁵ *Bhikusa Yamasa Kshatriya v. Sangamner Akola Taluka Bidi Kamgar Union*, [1963] Supp (1) SCR 524

⁶ *Ibid.*

⁷ *Ibid.*

the DPSP.⁸ The necessity of establishing this statement was clearly made due to the non-payment of overtime wages to the employees as were given threats of losing their job if anyone opposed this way.

WHY IS MINIMUM WAGE SO IMPORTANT?

The payment of wages less than the minimum wages is a violation of fundamental rights under Article 21 of the Constitution.⁹ In the view of the above statement, it is completely legal and valid to award the compensation to be three times of the minimal wages.¹⁰ The Indian constitution characterizes the 'living wage' for a worker. The term 'living wage' guarantees a fundamental way of life, which incorporates health, pride, comfort, and training. It likewise accommodates possibilities. The basic necessities are to be ensured by the employer so that the employee doesn't suffer; helping him to grow as an individual fully enjoying his rights. If you employee someone, that doesn't necessarily implicate that you just pay them for the work you hired them for. You need to take care about the basic amenities and ensure the employee lives a decent life. It is necessary, therefore, about the provision of a permanent base for residence at or near the work site.¹¹

WHO IS ELIGIBLE FOR MINIMUM WAGES?

Under S.2 of the U.P. Industrial Disputes Act, 1947, it is clearly stated that all the workmen falling under S.2 are eligible for the benefits of being an employee. However, it was held that the Act does not apply to a teacher in a private educational institution.¹² So no one of private institution shall keep any kind of hopes from the courts or the legal structure of the nation because in the end, he won't have legal rights to fight against the same. The Minimum Wages, Dearness allowance and bonus paid in two different departments differed which shows that there was no unity of employment and no unity of purpose.¹³ This means that whenever there are two different activities going on, there may be different workload and thereby the employer may employ on different pay-scale and the minimum wage may vary accordingly.

⁸ Y.A. Mamarde v. Authority under the Minimum Wages Act, [1972] 2 SCC 108

⁹ General Security & Information Services (P) Ltd. V. East Coast Railway Admn. [2012] SCC OnLine Ori 370

¹⁰ Ibid.

¹¹ Ibid.

¹² Hindu Inter College v. Prescribed Authority (Minimum Wages Act, 1948), [2004] SCC Online All 1103

¹³ Fine Knitting Co. v. Industrial Court, Bombay, [1962] Supp (3) SCR 196

WHAT IF THE MINIMUM WAGES ARE NOT PAID?

If the minimum wages prescribed under the Minimum Wages Act are not paid, it is punishable under S.22 of the Act and an agreement /contract contrary to the notification shall be void under S.25 of the Act.¹⁴ Non-payment and underpayment of the minimum pay permitted by law are considered as a chargeable offense. The punishment of the wrongdoer might be as long as 5 years of detainment with a fine of Rs 10000 as given in Section 22 of the Act. When minimum wages are fixed for an industry there can be no settlement for payment of lower wages even in respect of factories.¹⁵ The benefit of fixing this amount is that everyone gets to know about this basic minimal amount on which he shall be employed. The campaigns and awareness drives helps in ensuring in educating the employees about their rights which in turn help them to safeguard their own future and save themselves from getting exploited by their employers.

WHO GETS TO DECIDE THE MINIMUM WAGES?

The minimum wages are decided by the Government and not be considered as arbitrary or unguided because there is a procedure for gathering information about the type of employment and its nature which is secured by the Government.¹⁶ The power to fix the minimum wages is of the Government. Under clause (a) of sub section (1); the Government can appoint as many committees and sub-committees as it considers necessary to hold enquires and advise in relation to fixation or revision of Minimum wages.¹⁷ The committee comprises of high dignitaries who hold eminent positions and thereby not to be questioned as they have been appointed keeping in mind the dignified past record of those eminent persons. The people comprised under the committee shall not be from a particular scheduled employment, rather there has to be a single nexus established which shall be sufficient for their inclusion in the committee.¹⁸ For example, the controller of bureau of mines, president of state mines corporations and a few others relating to the same shall be deemed to connect regarding the mining industry. The authority under Minimum Wages Act, 1948 is entitled to decide all questions as are necessary to be decided and which arise under the Act but not such matters such as wrong or erroneous classification of the employee's job.¹⁹ The question of categorising

¹⁴ U. Unichoyi v. State of Kerala, [1962] SCR (1) 946

¹⁵ Ibid.

¹⁶ Chandra Bhavan Boarding & Lodging, Bangalore v. State of Mysore, [1969] 3 SCC 84

¹⁷ State of Rajasthan v. Hari Ram Nathwani, (1975) 2 SCC 517

¹⁸ Ministry of Labour and Rehabilitation v. Tiffin's Barytes Asbestos & Paints Ltd., [1985] 3 SCC 594

¹⁹ C.S. Parmeswaran v. Authority under Minimum Wages Act. 1948, for Nandgaon and Mannmad, [1968] SCC

the person and placing him in a certain category is a matter of analysing the issues on technical basis to solve the problem. Therefore, the authority is not given the power to decide this issue.²⁰

DOES TIMING OF THE EMPLOYEE MATTERS?

The timing of the work done is always questioned considering the amount of workload instilled onto them, for such a meagre amount. So, what about the timings of these employees? The legislation has taken care of it, with the help of judicial precedents with time clearly specified that the hours of work cannot be more than 9 in a day and taken with the intervals for rest these 9 hours may be spread over 10+ hours.²¹ The worker must not be made to work for more than 5 hours at a stretch before he has had an interval for at least half an hour (this provision is in factories act, 1948 only). The reason for unavailability of this provision is that in some employments time for work depends on some extraneous factors and hours of rest cannot always be fixed to break up those hours.²²

CAN YOU FILE A SUIT AGAINST ANY EMPLOYER FOR NOT PAYING OVERTIME DUES?

There are fixed hours in every job but there are someday when you have to work over the time to get some task done; are the employers bound to pay for this extra efforts they asked us to put to finish the task within some specific time breaking the working hours? The Minimum Wages Act does not talk about any rule or provision relating to additional payment over and above what shall be payable for overtime as such.²³ However, there can be an extra pay which need to be paid by the employers in case of extra workload and which doesn't include in the minimum wages as it only covers basic workload.²⁴ However, this cannot be tried in the courts against the employer. Whether any action is taken against employer or not, no penalty shall be imposed by any tribunal in shape of making the employee getting paid for the work done on Sundays something more than he would have otherwise was to be paid.²⁵ This means that the employer has a free hand in some matters and when someone has accused the employer under

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²⁰ Ibid.

²¹ Workmen v. Trustees of Port of Bombay, [1966] 2 SCR 632

²² Ibid.

²³ Workmen, Bombay Port Trust v, Trustees of Port of Bombay, [1962] Supp (1) SCR 36

²⁴ A.M. Allison v. B.L. Sen, 1957 SCR 359

²⁵ Ibid.

Minimum Wages Act, 1948; he shall not be bound to pay for the extra workload however, Factories Act, 1948 may serve the purpose and help the employee in getting some due for the overload he had done.

CLASSIFICATION OF SKILLED, SEMI-SKILLED AND UNSKILLED

Government cannot distinguish or create categories on its own like unskilled or semi-skilled and if the Government tries to do the same, it shall be held invalid as per the Act which only provides about minimum wages and fixed rates.²⁶ Section 3(3) of the Act speaks about different minimum rates. It says minimum wages can be fixed based on different employment different classes which are included as skilled unskilled semi skilled works in the same employment. It was said that minimum wages fixed based on adults children and apprentice. It is also based on different of realities in addition minimum wages will be fixed based on our work day or by month. In *Mahendra Chandra Dev vs. Union of India*²⁷ it was observed that the power of the government to prescribe minimum wage rate or revision thereof does not include the power to vary the other terms of the contract. While fixing the minimum wages recommendation of advisory board for different sectors such as skilled unskilled becomes necessary. In, *Bijay Cotton Mills Ltd. vs. The State of Ajmer*²⁸, the Supreme Court observed that "As regards the procedure for fixing a minimum wage the appropriate government has undoubtedly been given very large power, but before fixing the rate it has to take advice from advisory committee ". The committee has been discussed above; who has enough powers to decide on the fixed rates and also on the welfare of the employees and not cause any bias towards any segment of the society.

ROLE OF TRAINEE AND WHETHER HE SHALL BE TERMED AS AN EMPLOYEE?

Any minimum wages notification or modification does not cover the trainee and therefore the trainee has no locus standi to appeal for the same.²⁹ This is done to ensure that the trainee does not claim the rights same as claimed by any employee who has been working at the workplace for years. The trainee has been at the workplace for a temporary period, to learn and to help

²⁶ *Hindustan Sanitaryware & Industries Ltd. V. State of Haryana*, [2019] 15 SCC 774

²⁷ [1970] SCC (1)

²⁸ *Supra*. 4

²⁹ *Supra*. 22

him grow as an individual. Any mistake/negligence done by him shall be predicted on a general basis; thereby not giving him the basic benefits for the initial period will make him give his best and strive for the permanent employment at the workplace. The Government is beyond jurisdiction and it shall be on employer's discretion to decide the fixed training period of the trainee.³⁰ The trainee has been at the employer's place to learn a skill and it is not fixed on his part to continue as an employee or not be continued as one; thereby the Act has given enough space to not cover the trainee under the purview of this Act which might have delved into further confusion about who shall be treated as a trainee and otherwise.

EMPLOYEE EMPLOYED FROM DIFFERENT SOURCES

There is no distinction between the employee employed by the employer while other employed by the contractor. Both shall be under the same purview of the Act.³¹ There are times when a person is not directly employed by the employer and there are many sub-agents involved in the scenario but this shall not mean that in any way, the employee shall be discriminated on the grounds of his way of employment. He may be employed in any of the authorised way, shall be deemed to be treated as an employee and be covered under the Minimum Wages Act, 1948 and thereby be eligible for the minimum wages as fixed under that category of employment.

WHO GETS TO ENJOY THE BENEFITS UNDER ESI ACT, 1948?

There should be a provision of compulsory insurance introduced to minimise the risk which may act as a backup in emergency times.³² There has been no prescribed period for which the employee has to work to avail the benefit Employees' State Insurance Act, 1948³³ This acts as a plus point for the people who might not be at the employer's place for a long time, however, insurance does act as a guardian in the emergency times for the ones who can't afford the basic necessities and thereby the insurance helping them to bring the life back to the track. The basic amenities might not be holding any significant value in the eyes of the employer who are rich-class brats but the meagre initiative on the part of employer might help the employee in not losing a big chunk out of his pocket in case of emergency.

³⁰ Supra. 22

³¹ Ibid.

³² Bandhua Mukti Morcha v. Union of India, [1991] 4 SCC 177

³³ Royal Western India Turf Club Ltd. V. ESI Corpn., [2016] 4 SCC 521

WHAT IS THE TIME PERIOD UPTO WHICH YOU CAN FILE A COMPLAINT AGAINST AN EMPLOYER?

S.20 (2) of the Act stipulates “sufficient cause” should be given by the employee for making the application beyond the period of six months.³⁴ If a litigant has chosen to come to court after considerable delay, for which, he has no explanation, he has to blame himself for his matter being thrown out of the court without the merits being considered.³⁵ The litigant cannot make a complaint that the cause of justice has been defeated because of his own delay. No litigant can take advantage of his own fault and demand a premium relating to the same.³⁶ This is being framed keeping in mind to avoid any kind of ill intention in the mind of employer who may frame his employer in false cases due to some old rivalry. Usually, when the employee is being scolded or not being granted leave on an emergency purpose; it instils a sense of revolt in the heart of the employee who looks at his employer in a negative manner ready for balancing the sub-due.

ROLE OF CHILDREN AND RESPONSIBILITY OF EMPLOYER TO PROVIDE BASIC AMENITIES

The employment of children in the factories is taken very seriously and ensured that they are not exploited there.³⁷ The children are the future assets of the nation which can give a golden future in the hands of their future generations by working hard and making this nation more developed. The spirit of the Constitution provides that the children should not be employed in the factories and shall be educated, thereby bringing Article 21A making education as a compulsory means until the age of 14.³⁸ There have been frequent reports of children working in hazardous industries relating to the fireworks though it is not at all permitted by the State. However, some children can get employment under the hazardous factories provided they clear the age criteria and are not exploited at their workplace. The children can be employed in the process of packing area; however, proper minimum wages shall be fixed for the children which shall be 60% of what an adult man will earn of doing the same job. There should be special facilities made for improving the quality life of children. These facilities include the basic essentials which may provide for a better and healthy future of the child. The legislation and

³⁴ Rambal Ltd. v. Commr. Of Labour, 2015 SCC OnLine Mad 313

³⁵ Ibid.

³⁶ Ibid.

³⁷ M.C. Mehta v. State of T.N., [1991] 1 SCC 283

³⁸ Ibid.

the judiciary has repeatedly stated to frame the laws and implement them which can benefit the children in the best possible manner. The state government should enforce facilities of recreation and education as provided under Factories Act, 1948.³⁹ Health care of workmen and members of their families and education of the children in any exclusive locality should be the responsibility of the employer.⁴⁰ There are locations where there is no basic amenity available; making it hard for the employees to survive and live out a decent life. In these circumstances, the employer shall take care and provide the basic essentials to help in the survival of its employees.

MAINTENANCE OF REGISTERS, COLUMNS AND PROPER DATA ON MINIMUM WAGES

When deductions are made by the employer, he has to give reasons for the same and if any of the deduction is made by way of fine, he has to indicate the same.⁴¹ There should be proper registers maintained for fines, deductions and wages including the overtime wages in a separate column.⁴² This system ensures that there is transparency in the system. It will help in the long run and may even prove to be beneficial for the employer who may present these documents as a proof to safeguard his defence. There may be times when he might be falsely accused in any case of old-rivalry, thereby these documents will help the court to establish the fact that the employer had done its job in true sense and the other party has filed the case on false charges.

CONCLUSION

The Central Government must ensure that every payment of wages, whether it be normal wages or overtime wages shall be made directly to workmen without the intervention of *khatedars* and free from any deductions whatsoever, except those authorised by the law.⁴³ This ensures that there is no third-man who interferes and takes the money of the deserved class who earned it. It is not enough merely to go periodically and examine the muster-rolls or muster-sheets showing payment of wages, for that would not show the reality if there were any secret

³⁹ Supra. 36

⁴⁰ *Bandhua Mukti Morcha v. Union of India*, [1991] 4 SCC 177

⁴¹ *Maya Chandra v. Inspector, Minimum Wages Office*, [1979] 38 FLR 184 (Cal)

⁴² Ibid.

⁴³ *Labourers, Salal Hydro Project v. State of J&K*, [1983] 2 SCC 181

commissions or mischief done by the *khatedars*.⁴⁴ This will bring a change in ensuring that there is no exploitation going around and the employees are being treated the way they should be. Changes must be brought to bring a revolution and help in the overall growth of the individual. when there is an inspection on a daily basis, it keeps the employer aware that there is a higher agency looking out for the employees and he shall not practice any kind of exploitation which may invite any kind of penalties or any other serious repercussions.

⁴⁴ *Ibid.*