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MINIMUM WAGES ACT, 1948

Introduction: Our country is facing the problem of unemployment and this lead to work on wages which are even not able to fulfil the basic needs of workers and their family. Thus, the Minimum Wages Act, 1948 has been enacted to prevent exploitation of workers and to fix minimum wages in certain employments. The Minimum Wages Act, 1948 came into force on **15th March, 1948**. The Act extends to **whole of India**.

Objects of Minimum Wages Act, 1948

Objects of passing Minimum Wages Act, 1948 are as follows:

- ◆ To prevent exploitation of labour.
- ◆ To provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as 'Scheduled Employments'.
- ◆ To empower the Appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries and
- ◆ To empower the Appropriate Government to give effect to other provisions of Act.

The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by the Supreme Court in *Unichoyi vs. State of Kerala AIR 1962 SC 12*.

DEFINITIONS

Adolescent [Section 2(a)]: Adolescent means a person who has completed his 14 year of age but has not completed his 18 year.

Adult [Section 2(aa)] : Adult means a person who has completed his 18 year of age.

Appropriate Government [Section 2(b)] : Appropriate Government means:

- (1) In relation to any scheduled employment carried on by or under the authority of the Central or a railway administration, or in relation to a mine, oilfield or major part or any corporation established by a Central Act: **The Central Government** and
- (2) In relation to any other scheduled employment: **The State Government**.

Significance of Appropriate Government:

- The minimum rates of wages are fixed and revised by Appropriate Government.
- Appropriate Government is empowered to lay down the procedure for fixing and revising minimum rates of wages.
- The advisory board is constituted by Appropriate Government.
- Appropriate Government is empowered to state the records to be maintained under the Act.
- Appropriate Government appoints an authority to hear and decide any claims arising under the Act.

Child [Section 2(bb)]: Child means a person who has not completed his fourteenth year of age.

Employee [Section 2(i)]: Employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed.

Employee includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale purpose of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises, net being premises under the control and management of that person.

Employee also includes an employee declared to be an employee by the Appropriate Government.

Any members of Armed Forces of the Union are not employee under the Act.

Judicial Views:

- ◆ An out-worker who prepared goods at his residence, and then supplied them to his employer was held as employee for the purpose of this Act. [*Loknath Nathu Lal v. State of Madhya Pradesh AIR 1960 M.P. 181*]
- ◆ A chowkidar who guards the factory and an accountant who is concerned with accounts and compounder working in tea plantation all are employee. [*Manager, S.T. Estate v. M.K. Purkayastha AIR (1960) Assam 121*]
- ◆ A dismissed employee is still employee for the purpose of claiming relief under the Act. [*Chacko v. Varkey (1962) 1 LLJ 341*]

CASE STUDY : *B, an out worker prepared goods at his residence and supplied them to the employer for the sale round the year. He claimed minimum wages as fixed under Minimum Wages Act, 1948. The employer refused to do so. Decide.*

An out-worker who prepared goods at his residence, and then supplied them to his employer was held as employee for the purpose of Minimum Wages Act, 1948. Hence, such out worker is entitled to minimum wages. [*Loknath Nathu Lal vs. State of Madhya Pradesh AIR 1960 M.P. 181*]

Employer [Section 2(e)]: Employer means any person who employs directly or through contractor employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes:

In a factory		Person named as Manager u/s 7 of Factories Act, 1948
In any scheduled employment under the control of	Central Government	The person or authority appointed for the supervision and control of employees. Where no person of authority is so appointed, the Head of the Department.
	Local Authority	The person appointed for the supervision and control of employees. Where no person is so appointed, the Chief Executive Officer of the local authority.
In any other case		Any person responsible to the owner for the supervision and control of the employees or for the payment of wages.

Judicial Views:

- ◆ Person who engages workers through another like a contractor would also be an employer. [*1998 LLJ I Bom. 629*]
- ◆ If minimum wages have not been fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not an employer with the meaning of the Act. [*Nathu Ram Shukla v. State of Madhya Pradesh AIR 1960 MP 174*]

Scheduled employment [Section 2(g)]: Scheduled employment means an employment specified in the Schedule or any process or branch of work forming part of such employment.

Note: *The schedule is divided into two parts namely, Part I and Part II. When originally enacted Part I of Schedule had 12 entries. Part II relates to employment in agriculture.*

Wages [Section 2(h)]: Wages means all remunerations 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 (HRA).

Wages does not include following:

- (1) The value of:
 - (a) House accommodation, supply of light, water medical attendance
 - (b) Other amenity/service excluded by order of the Appropriate Government
- (2) PF & ESI contributions
- (3) Travelling allowance/travelling concession
- (4) Sum paid to defray special expenses due to nature of his employment
- (5) Gratuity payable on discharge

FIXATION & REVISION OF MINIMUM WAGES

Fixation of minimum rates of wages [Section 3]

- ◆ Appropriate Government shall fix the minimum rates of wages, payable to employees in an employment specified in Parts I & II of the Schedule.
- ◆ In the case of an employment covered in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted.
- ◆ In case of the employments specified in Part II, the minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether.
- ◆ If there are **less than 1000 employees in the whole State** in any scheduled employment the Appropriate Government *may not* fix minimum rates of wages for that scheduled employment. But when number increases 1,000 or more Appropriate Government shall fix minimum wage rate. [Section 3(1A)]

Judicial Views:

- ◆ The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities. [*Basti Ram v. State of AP AIR 1969 A.P. 227*]
- ◆ The constitutional validity of Section 3 was challenged in *Bijoy Cotton Mills vs. State of Ajmer 1955 S.C. 3*. The Supreme Court held that the restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages, though they interfere to some extent with freedom of trade or business guarantee under Article 19(1)(g) of the Constitution, are not unreasonable and being imposed and in the interest of general public and with a view to carrying out one of the Directive Principles of the State Policy as embodied in Article 43 of the Constitution, are protected by the terms of Clause (6) of Article 9.

Revision of minimum wages [Section 3(1)(b)]

Appropriate Government may review minimum rate of wages at intervals **not exceeding 5 years**. This means that minimum wages can be revised earlier than 5 years but gap between two revisions should not be more than 5 years.

Manner of fixation/revision of minimum wages [Section 3(2)]

The Appropriate Government may fix minimum rate of wages as:

- Minimum time rate
- Minimum piece rate
- Guaranteed time rate for those employed in piece work and
- Over time rate

Section 3(3): Different minimum rates of wages may be fixed for:

- Different scheduled employments
- Different classes of work for same scheduled employments
- Adults, adolescents, children and apprentices
- Different localities

Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

- By the hour
- By the day
- By the month or
- By such other large wage periods as may be prescribed

Where such rates are fixed by the day or by the month, the manner of calculating wages for month or for a day as the case may be, may be indicated.

Minimum rate of wages [Section 4]

Any minimum rate of wages may consist of:

- (i) Basic rate of wages (+) cost of living allowance or
- (ii) Basic rate of wages (+) cost of living allowance (+) cash value of the concession for supplies of essential commodities at concessional rates or
- (iii) All inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions.

The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates shall be computed by the Competent Authority at specified intervals in accordance with directions specified by the Appropriate Government.

Procedure for fixing and revising minimum wages [Section 5]

The Appropriate Government can follow *either of the two methods* described below :

- (1) **Committee Method:** The Appropriate Government may appoint committee to hold enquiries and advise it in respect of such fixation or revision of minimum wages. After considering the advice of the committee the Appropriate Government shall fix or revise the minimum rates of wages by notification in the Official Gazette.
- (2) **Notification Method:** As per this method the Appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected and give 2 months time for making representation by the interested parties. After considering all the representations and consulting with the Advisory Board, the Appropriate Government shall fix or revise the minimum rates of wages by notification in the Official Gazette.

The minimum wage rates shall come into force from the date specified in the notification. If no date is specified, wage rates shall come into force on the expiry of 3 *months* from the date of the issue of the notification.

Judicial Views:

- ◆ Committee appointed under Section 5 is only an advisory body and that Government is not bound to accept its recommendations. [*Edward Mills Co. Ltd. vs. State of Ajmer AIR 1955 SC 25*]
- ◆ Minimum wage rates can be revised with retrospective effect. [*1996 II LLJ 267 Kar.*]

ADVISORY BOARD & CENTRAL ADVISORY BOARD

Constitution of Advisory Board [Section 7]

The Advisory Board is constituted by the **Appropriate Government** for the purpose of:

- Co-ordinating the work of committees appointed u/s 5 and
- Advising the Appropriate Government for fixing and revising of minimum rates of wages.

Composition of Advisory Board [Section 9]

The Advisory Board shall consist of persons to be nominated by the Appropriate Government representing employers and employees in the scheduled employment who shall be equal in number, and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman by the Appropriate Government.

Judicial Views:

- ◆ It is not necessary that the Advisory Board shall consist of representatives of any particular industry or of each and every scheduled employment. [*B.Y. Kashatriya v. S.A.T. Bidi Kamgar Union AIR (1963) SC 806*]
- ◆ An independent person means a person who is neither an employer nor an employee in the employment for which the minimum wages are to be fixed. Mere fact that a person happens to be a Government servant will not divert him of the character of the independent person. [*State of Rajasthan v. Hari Ram Nathwani (1975) SCC 356*]

CASE STUDY : *Does the Minimum Wages Act, 1948 make it compulsory to have representative of any particular industry or of each and every scheduled employment on the Advisory Board.*

It was held that it is not necessary that the Advisory Board shall consist of representatives of any particular industry or of each and every scheduled employment. [*B.Y. Kashatriya v. S.A.T. Bidi Kamgar Union AIR (1963) SC 806*]

Constitution of Central Advisory Board [Section 8]

Central Government shall appoint a Central Advisory Board for the purpose of advising the Central and State Government in the matters of:

- Fixation and revision of minimum rates of wages and other matters
- For co-ordinating work of the advisory boards.

Composition of Central Advisory Board [Section 9]

The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman by Central Government.

LIABILITY OF PAYMENT OF MINIMUM WAGES & CONSEQUENCES**Wages in kind [Section 11]**

Minimum wages shall be paid in *cash*. It can also be paid in kind if there is custom and approved by Appropriate Government. Supply of essential commodities at concessional rates can also be authorized.

Payment of minimum rate of wages [Section 12]

It is to be noted that minimum wages must be paid irrespective of the extent of profits, the financial condition of the establishment.

The employer shall pay to every employee engaged in a scheduled employment wages which should not be less than the minimum wages fixed by the Appropriate Government. Payment of less than the minimum wages notified by the Appropriate Government is an offence.

FIXATION OF NORMAL WORKING HOURS & OVER TIME PAYMENT**Fixation of normal working hours for normal working day [Section 13]**

Fixing of minimum rates of wages without reference to working hours may not achieve the purpose for which wages are fixed. Thus, the Appropriate Government may:

- (a) Fix the number of working hours which shall constitute a normal working day, inclusive of specified interval.
- (b) Provide a paid holiday in every period of 7 days.
- (c) Provide for payment of work on a paid holiday at a rate not less than the overtime rate.

However for following classes of employees the above provisions shall apply subject to such conditions as may be prescribed: