

Before the Appropriate Authority under the Minimum wages Act, 1948 Circle 1  
Gurgaon, Haryana

In the matter of:

Bibha Devi

Versus

M/s Modelama Exports

Claim u/s 20 of the Minimum Wages Act, 1948 against the Payment of Lesser Amount than the Minimum Amount of Wages as fixed by the State Government.

It is respectfully submitted:

1. **Bibha Devi (hereinafter referred to as 'the worker')**, w/o Shri Manoj Kumar, R/o House no. 1253, Gali no. 12, Kapashera, New Delhi was employed by **M/s Modelama Exports Limited**, as Final Checker. She joined the Company on **1.11.2014** as a permanent worker and her appointment letter is attached as **Annexure-1** at pg---. She was earlier employed in Modelama's plant no. 105 during 2012- 2013, as a 'Checker'. She was illegally terminated on **27.04.2016**. The demand notice for this illegal termination is pending before Conciliation Officer, Circle I, Gurgaon.
2. The worker was **directly employed** by the Company and during her employment, she was paid wages lower than the legally stipulated **Minimum Wages**, by the Company. The wages received by the worker fall below minimum wages stipulated under Minimum Wage Notifications (hereinafter referred to as 'MW Notification') periodically issued by the state government from 2012 to 2015 and fall foul of the provisions of the Minimum Wages Act, 1948. The copy of her salary slips issued by the company is annexed here as **Annexure-2- (colly)** at pg-----.

**A. Company's non-Compliance with the Minimum Wage Notification, periodically issued since 2012**

**I. Design and Purpose of MW Notifications**

3. The state government of Haryana periodically issues MW Notifications which determine the minimum wages for scheduled employments. The notifications can be read to understand categorization of skill in the scheduled employments (Unskilled, Semi-Skilled 'A' and 'B', Skilled 'A' and 'B', Highly Skilled) and the recognition of experience gained by the works wherein the more the experience, higher the wages of the workers.

**II Nature of work and experience of the worker**

4. In the instant case, the worker was employed as a Final Checker in the company- a skilled job and was responsible for giving final clearance to pieces before packaging.
5. Earlier she had been employed as Checker in Modelama wherein her duties included- checking defects in the pieces produced.
6. The worker is also experienced in the work as she has been employed in the garment industry since 2009 and has had two stints with Modelama Exports Ltd, starting in 2012. The worker has also worked for two more companies the proof of which is in the IDs and payslips of these companies annexed here as **Annexure- 4( colly)**.

**III. Wages paid below the level of MW Notifications**

7. As is evident from the salary slips issued to the worker and attached here as Annexure- 2 the wages paid to the worker fell below the minimum wages fixed by the MW Notifications. The notifications issued since 2012, are also reproduced as **Annexure- 3**

To highlight the quantum of wages paid compared with MW Notifications in force at the appropriate time and the potential claim, the following table is being provided:

**This table is yet to be completed but should give an idea of the argument**

Designation	Salary paid to the worker	Relevant MW notification (MWN), salary for identified skill category	Difference in salary/ due wages	Evidence	Remarks

1.	Checker	July 2013 Basic Salary- 5343 Total salary paid- 2291	MWN January, 2013 Semi- skilled A- Rs 5342.15	2726	Salary Slip for July, '13 attached as Annexure- 2 MW Notification, 2013 attached as Annexure - 3	Categorization of worker as 'Semi Skilled A' with basic salary as Rs 5,342.15
2.	Final Checker	November, 2014 Basic Salary- 5770 Total salary paid- 4836	MWN August, 2014, w.e.f. 1 <sup>st</sup> November 2014 Semi-Skilled A- Rs7770	2517	Salary slip attached for Nov 2014 attached as Annexure-2 MW Notification, Aug, 2014 attached as Annexure - 3	The worker is promoted to the position of Final Checker- a higher designation in the garment industry. However, she continues to be categorized as 'Semi- Skilled A' worker. The increment in salary is visible on account of increases minimum wages, as per MW Notification 2014.
3.	Final Checker	December 2014 Basic Salary- 5770 Total salary paid- 6492	MWN- Aug 2014 Semi Skilled A- 7770 Semi skilled B- 8160	861	Salary slip attached for Dec 2014 attached as Annexure-2 MW Notification, Aug, 2014 attached as Annexure - 3	
4.	Final Checker	January 2015 Basic Salary- 5770	MWN- Aug 2014 Semi Skilled A- 7770 Semi skilled B-	1210	Salary slip attached for Jan 2015 attached as Annexure-2 MW Notification, Aug, 2014 attached as	

		Total Salary paid- 6169	8160		Annexure - 3
5.	Final Checker	February 2015 Basic Salary- 5943 Total salary paid- 5949	MWN, 2014 Semi-skilled A- 7770 Semi Skilled B- 8160	1439	Salary slip attached for February 2015 attached as Annexure-2 MW Notification, Aug 2014 attached as Annexure - 3
	Final Checker	March 2015 Basic Salary- 5943 Total salary paid- 5591	MWN- Aug 2014 Semi Skilled A- 7770 Semi skilled B- 8160	1788	Salary slip attached for March 2015 attached as Annexure-2 MW Notification, Aug, 2014 attached as Annexure - 3
7.	Final Checker	April 2015 Basic Salary- 5943 Total Salary- 3827	MWN- Aug 2014 Semi Skilled A- 7770 Semi skilled B- 8160	3818	Salary slip attached for April 2015 attached as Annexure-2 MW Notification, Aug, 2014 attached as Annexure - 3
8.	Final Checker	May 2015 Basic Salary- 5943 Total Salary- 5116	MWN- Aug 2014 Semi Skilled A- 7770 Semi skilled B- 8160	2403	Salary slip attached for May 2015 attached as Annexure-2 MW Notification, Aug, 2014 attached as Annexure - 3
9.	Final Checker	July 2015: Basic Salary- Rs 5943	MWN- Aug 2014 Semi Skilled A- 7770 Semi skilled B-	2773	Salary slip attached for July 2015 attached as Annexure-2 MW Notification, Aug, 2014 attached as

		Total amount paid- Rs 4776	8160		Annexure - 3
10.	Final checker	October 2015: Basic Salary- 6017 Total amount paid- 5383	MWN- Aug 2014 Semi Skilled A- 7770 Semi skilled B- 8160	2125	Salary slip attached for October 2015 attached as Annexure- 2  MW Notification, -Aug, 14, attached as Annexure -3
11.	Final Checker	January, 2016 Basic salary- Rs 7980 Total amount paid- Rs 7870	MWN, 2015 Semi Skilled A- Rs 7980 Semi skilled B- Rs 8379	242	Salary slip attached for Jan 2016 attached as Annexure-2  MW Notification, Nov 2015 attached as Annexure - 3

8. As evidenced from the salary slips of the worker, there is considerable difference in the basic salary and the net salary paid to the worker, which indicates hefty and illegal deductions from her salary, on dubious grounds. The minimum wages as per the notification cannot be segregated into components. The basic salary inclusive of the ESI and PF deductions has to be at par with the wages mentioned in the Notification.
9. As the table highlights, payment of wages which are lesser than those the worker is entitled to- such practise also enables the company to evade its legal liabilities. Since PF contribution of the employer is computed based on the wages of the workers, lesser salary translates into lesser contribution to Provident Fund and Employee State Insurance Scheme (ESI) by the employer.

**IV Discrepancy in Skill Level, designation and failure to take note of experience**

10. As highlighted by the table above, the worker was first employed by Modelama as a Checker and paid wages for skill category Semi Skilled 'A', as evident from Salary Slip issued for July 2013 attached as Annexure 2. However, the worker was later promoted to the designation of 'Final Checker' as established by Salary Slip of November 2014, attached as Annexure....

which is higher in hierarchy operating in the industry or by industry norms. Despite a promotion, the worker continued to be identified in the Semi Skilled 'A' category and continued to be paid wages for this category. Such action highlights the following *mala fide* and illegal practice:

- a. The worker was not informed about the skill category she was employed in at the time of joining and it also does not find mention in her joining/appointment letter. The copy of the joining/appointment letter is annexed here as **Annexure- 1** at pg.....
- b. The worker was not given the advantage of promotion to the designation of Final Checker as she continued to receive the salary within the same skill category i.e. Semi Skilled 'A', as evidenced by subsequent salary slip of November 2014, attached as Annexure 2 at pg. ....
- c. A promotion indicates higher skill level and yet the worker was deprived of salary commensurate with higher skill category, which in the instant case is skill category Semi Skilled 'B', as per MW Notification, 2014.
- d. The increment visible in her salary, was only on the account of revised Minimum Wage Notification issued subsequently which increased wages for all categories including the Semi Skilled A category.
- e. Since promotion was given by Modelama Exports Pvt Ltd, it is established that the company was well aware of the skill level, accumulation of higher skill over a period of time and the worker's overall experience in the garment industry
- f. The MW Notification provides for upward revision of wages based on the experience of the worker. **MW Notification, 2015, on pg. 2555 provides that**  
**"After 3 years of experience in Semi-Skilled "A" the employees would be deemed categorized as Semi-Skilled "B"."**

It is to be noted that the worker having worked as a Semi- Skilled A category worker for 3 years, from 2013 to 2015, was entitled to the salary of Semi- Skilled B category worker, as per the MW Notification, 2015. She was entitled to upward revision of wages based on the deemed promotion provision of the notification. The company has failed to comply with the provisions of the MW Notification

**Hence, it is clear that the worker was entitled to wages of Semi Skilled 'B' category based on her promotion as well as quantum of experience held.**

- g. It is established that the designation of the worker is misleading and inaccurate. Given that the company has the final say in deciding the skill level and commensurate salary of the worker, it is a convenient

practice for the company to disregard the workers' actual skill level and experience and underpay them.

In this manner the company evades its liability to pay wages commensurate with skill and experience.

#### V Denial of statutory day of rest and nonpayment of statutory rate of overtime work

11. As per section 13(1) of the Minimum Wages Act, 1948 the worker is entitled "to a day of rest in every period of seven days, which shall be allowed to all employees and for payment of remuneration in respect of such days of rest". The worker was never given any paid weekly off. The factory does not allow a day of rest to workers. Salary deductions are the norm when a worker takes leave.

Additionally, the section provides 'for payment for work on a day of rest at a rate not less than the overtime rate'. The worker was paid wages at the regular rate and not at overtime rate.

12. As per Section 14, "where an employee, whose minimum rate of wages is fixed under this Act, works on any day in excess of the number of hours constituting a normal working, the employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under this Act". However, the worker was paid over-time at double the regular rate of wages, only for two hours of overtime, irrespective of the total number of overtime work hours. Over-time of only up to 10 hours per month was mentioned in the pay slips. The account statements of the worker is annexed here as Annexure- 5.

#### VI Malicious practice adopted by the company

13. Nonpayment of minimum wages is a rampant practice across Gurgaon and this case is not an isolated case. Workers are regularly kept in the dark about the skill level the company put them under. Industries across Gurgaon have adopted this such practice and in turn also make lesser contribution to workers' Provident Fund and ESI. This has emerged as a general practice across the industry where there are high rates of termination and workers are fired frequently on inadequate grounds. Given that the notification is a legally binding document, non-compliance with it is an illegal and criminal act.

This notification has been in public domain for over 6 months and has seen unprecedented media coverage, action by worker groups and engagement of various Labour rights groups and trade unions on the issue.

### VII Violation of Minimum Wages Act, 1948

14. As per section 12 of the MW Act, 1948:

"Where in respect of any scheduled employment, a notification...is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed."

By failing to pay minimum wages to the worker, the company has failed to meet its legal obligations under the Act.

15. Non Payment of minimum wages is an offence as per Section 22 of the Act and companies that fail to pay minimum wages, are liable under the Act's scheme.

16. Judgements of the Supreme Court have also held non-payment of minimum wages as serious violation of labour rights and identified such labour as 'forced labour'.

#### **17. Ground for condoning delay**

- a. The worker raised these issues before the management once, but as she wanted to continue with her job she did not raise the point again, for fear of being fired.
- b. There was an upward revision of salary after the notification but the worker was unaware about her entitlements- unaware that legally stipulated wages were not being paid to her and that the increment given fell short of the legal stipulation as per the revised Minimum Wages Notification.

#### **It is therefore prayed that:**

1. The above mentioned company be directed to pay the wage that is legally due to the worker
2. Payment of such compensation as the authority deems fits as per S 20(3) of the Minimum Wages Act, 1948.
3. Penalty be imposed by the Authority on the company under section 20(4).



4. The Company be directed to pay such amount as fine to the Workman as is reasonable and as this Authority thinks fit.

**Applicant:**

**Date:**

**Through ARs:**

**Kumar Ravishankar/Monalisa  
Plot No. 1, Rao Maichand Complex,  
Jwala Mill, Gurgaon Haryana**

**Note:** Five copies submitted before the appropriate officer.