UNIT 27 THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

Objectives

The Objectives of this unit are to:

- discuss the salient features of the Act
- present selected case law on the subject

Structure

27.1 GENESIS OF THE ACT

Legislation for compulsory institution of contributory provident fund in industrial undertakings was discussed several times at tripartite meetings in which representatives of the Central and State governments and of employers and workers took part. A large measure of agreement was reached on the need for such legislation. A non-official Bill on this subject was introduced in the Lok Sabha in 1948 to provide for the establishment and grant of provident fund to certain classes of workers by their employers. The Bill was withdrawn only on an assurance by the government that it would soon consider the introduction of a comprehensive bill. There was also a persistent dema that the Central Government extend the benefits of Coal Mines Provident Fund Scheme to workers employed in other industries. The view that the proposed legislation should be undertaken was largely endorsed by the Conference of Provincial Labour Ministers' held in January 1951. On 15th November 1951, the Government of India promulgated the Employees' Provident Funds Ordinance which came into force on that date. It was subsequently replaced by the Employees' Provident Funds Act passed on 4th March 1952.

27.2 OBJECT OF THE ACT

The Act was passed with a view to making some provision for the future of the industrial worker after his retirement or for his dependants in case of his early death and inculcating the habit of saving among the workers. The object of the Act is to provide substantial security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread-winner and in some other contingencies.

The Act provides for a scheme for the institution of provident fund for specified classes of employees. Accordingly, the Employees' Provident Fund-Scheme was framed under Section 5 of the Act, which came into force on 1st November 1952. On a review of the working of the scheme over the years, it was found that provident fund was no doubt an effective old age and survivorship benefit; but in. the event of the premature death of an employee, the accumulations in the fund were not adequate enough to render long-term financial protection to his family. This lacuna led to the introduction of the Employees' Family Pension Scheme with effect from 1st March 1971. The Act was further amended in 1976 with a view to introducing Employees' Deposit Linked Insurance Scheme, a measure to provide an insurance cover to the members of the provident fund in covered establishments without the payment of any premium by these members. Thus; three schemes have been framed under the Employees' Provident Funds and Miscellaneous Provisions Act.

27.3 APPLICABILITY OF THE ACT

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is applicable from the date of functioning or date of set-up of establishments provided the factory/establishment employed twenty or more persons. The Act, however, does not apply-to co-operative societies employing less than 50 persons and working without the aid of power. The Central Government is empowered to apply the provisions of this Act to any establishments employing less than 20 persons after giving not less than two months' notice of its intention to do so by a notification in the Official Gazette. Once the Act is applied, it does not cease to be applicable even if the number of employees falls below 20. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with the mutual consent of the Act.

27.4 DEFINITIONS

Employee

"Employee" as defined in Section 2(f) of the Act means any person who is employed for wages in any kind of work manual or otherwise, in or in connection with the work of an establishment and who gets wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of the establishment.

Employer

In relation to a factory establishment, as per Section 2(e) of the Act the employer means the owner or occupier including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager' of the factory and in relation to other establishment, the person who has the ultimate control over the affairs of the establishment.

Membership

Employees drawing a pay not exceeding Rs. 5,000 per month are eligible for membership of the fund. Every employee employed in or in connection with the work of a factory or establishment shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

27.5 THE EMPLOYEES' PROVIDENT FUND SCHEME, 1952

Contribution

The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is 10% of the pay of the employees. The term "wages" includes basic wage, dearness allowance, including cash value of food concession and retaining allowance, if any. The Act, however, provides that the Central Government may, after making such enquiries as it deems fit, enhance the statutory rate of contribution to 12^0k of wages in any industry or class of establishments.

The contributions received by the Provident Fund Organisation from unexempted establishments as well as by the Board of Trustees from exempted establishments shall be invested, after making payments on account of advances and final withdrawals, according to the pattern laid down by the Government of India from time to time. The exempted establishments are required to follow the same pattern of investments as is , prescribed for the unexempted establishments. The provident fund accumulations are invested in government securities, negotiable securities or. bonds, 7-year national saving certificates or post office time deposits schemes, if any. .

EPF Interest Rate

Under Para 60(1) of the Employees' Provident Fund Scheme, the Central Government, on the recommendation of the Central Board of Trustees, declares the rate of interest to be credited annually to the accounts of provident fund subscribers.

Withdrawals

Under the scheme, a member may withdraw the full amount standing to his credit in the fund in the event of

i) Retirement from service after attaining the age of 55;

ii) Retirement on account of permanent and total incapacity;

iii) Migration from India for permanent settlement abroad; and

iv) Termination of service in the course of mass retrenchment (involving 3 or more persons). The membership for this purpose is reckoned from the time of joining the covered establishment till the date of the settlement of the claim,

A member can withdraw up to 90 % of the amount of provident fund at credit after attaining the age of 54 years or within one year before actual retirement on superannuation whichever is later.

The Scheme provides for non-refundable partial withdrawals/ advances to meet certain contingencies

1) Financing of life insurance policies;
2) House-building;
3) Purchasing shares of consumers co-operative credit housing societies;
4) During temporary closure of establishments;
5) Illness of member, family members;
6) Member's own marriage or for the marriage of his/her sister, brother or daughter/ son and post-matriculation education of children;
7) Damages to movable and immovable property of members due to a calamity of exceptional nature;
8) Unemployment relief to individual retrenchee members;
9) Cut in supply of electricity to the factory/establishment; and

10) Grant of advance to members who are physically handicapped for the purchase of equipment.

Nomination

If there is no nominee, the amount shall be paid to the members of the family in-equal shares except:

a) Sons who have attained majority;

b) Sons of a deceased son who have attained majority;

c) Married daughters whose husbands are alive;

d) Married daughters of a deceased son whose husbands are alive.

The nomination form shall be filled in duplicate and one copy duly accepted by the provident fund office will be. kept by members. Incase of change, a separate form for a fresh nomination should be filled in duplicate.

Transfer

When a member leaves service in one establishment and obtains re-employment in+ another establishment, whether exempted or unexempted, in the same region or in another region, he is required to apply for the transfer of his provident fund account to the Regional Provident Fund Commissioner in the prescribed form. The actual transfer of the provident fund accumulations with interest thereon takes place in cases of:

i) Re-employment in an establishment, whether exempted or unexempted, in another region/sub-region;

ii) Re-employment in an exempted establishment in the same region/sub-region;

iii) Leaving service in an exempted establishment and re-employment in an unexempted establishment;

iv) Re-employment in an establishment not covered under the Act

A member of the fund is entitled to get full refund of both the shares of contributions made by him as well as by his employer with interest thereon immediately after leaving the service.

Account Slaps

As soon as possible after the completion of each accounting year, every member of the fund shall be supplied with an account slip showing:

a) The opening balance;

b) The amount contributed during the year;

c) The amount of interest credited or debited during the year; and

d) Closing balance,

Errors, if any, should be brought to the notice of the Commissioner within six months.

Exemption

An establishment/factory may be granted exemption under Section 17 if, (i) in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contributions are not less favourable than those specified in Section 6 of the Act, and (ii) if the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable than the benefits provided under the Act or any scheme in relation to the employees in any other establishment of a similar character. While recommending to the appropriate government grant of exemption under this section, the Employees' Provident Fund Organisation usually takes into consideration the rate of contribution, the eligibility clause, the forfeiture clause and the rate of interest. Also, the totality of the benefits provided under the rules of the exempted funds is taken into consideration.

The Central Government is empowered to grant exemption to any class of and soda] security establishments from the operation of the Act for a specified period, on financial or another grounds under section 16(2). The exemption is granted by issue of notification in the Official Gazette and subject to such terms and conditions as may be specified in the notification. The exemptions does not amount to total exclusion from the provisions of the Act. The exempted establishments are required to constitute a Board of Trustees according to the rules governing the exemptions to administer the fund, subject to overall control of the Regional Provident Fund Commissioner. The exempted establishments are also required to maintain proper accounts, submit prescribed returns, invest provident fund accumulations in the manner prescribed by the central Government from time to time, and to pay inspection charges. Exemption is liable to be cancelled for breach of any of these conditions.

27.6 THE EMPLOYEES' PENSION SCHEME, 1995

Introduction

Employees' Pension Scheme 1995 has been made applicable on 16.11.1995 retrospectively with effect from 1.4.1993. This new Scheme replaces the erstwhile Family Pension Scheme, 1971.

Membership

i) Every member of the Employees' Provident Scheme 1952 and opted for Employees Family Pension Scheme 1971.

ii) All new entrants to the Employees' Provident Fund Scheme 1952 will become member of the Employees' Pension Scheme 1995 on compulsory basis.

iii) Every employee who has ceased to be a member of the Employees Family Pension Scheme 1971 during 1.4.1993 and 15.11.1995 was given option to become member of the Employees' Pension Scheme 1995 upto 31.3.1998.

iv) Every existing member of the Employees' Provident Fund Scheme 1952 not being member of Family Pension Scheme 1971 has option to become member of Employees' Pension Scheme, 1995.

Option Requirement

i) Members who have died during 1.4.1993 and 15.11.1995 shall be deemed to have exercised option of joining Employees' Pension Scheme 1995 with effect from the date of death:

ii) Members who are alive may exercise option to become member of the Employees' Pension Scheme 1995 on the date of exit from the employment by depositing amount along with interest at the rate of 8.5 per cent per annum from the date of such withdrawal.

iii) Members will have option to join Employees' Pension Scheme 1995 by depositing the contribution along with up to date interest under ceased Employees' Family Pension Scheme 1971 with effect from 1.3.1971.

Contribution

Employee is not required to contribute separately under the Employees' Pension Scheme 1995. Employer share of provident fund contribution at the rate of 8.33 % is diverted to pension fund every month

Service for Pension

Actual service rendered after 16.11.1995 together with the service for which the contribution has been made under the eased Family Pension Scheme 1971, if any will be treated as service for pension.

A person is entitled for pension after completing the age of 58 years with minimum service of 10 years.

Six months or more shall be treated as one year and the service less than six months shall be ignored.

Determination of Pensionable Salary

Pensionable salary shall be the average monthly pay drawn in any manner including on piece rate basis during the contributory period of service in the span of 12 months preceding the date of exit from membership of the Employees Provident Fund.

Benefits

- Monthly Member Pension - Superannuation Pension/retirement on attaining the age of 58 years.
- Pension Scheme Certificate - Document indicating pensionable service and the amount of reduced pension on the date of exit from employment which shall be counted for determination of pension along with fresh service where the member has not attained the age of retirement.
- Invalidity Pension - In case of permanent and total disablement during the course of employment.
- Widow Pension - Pension from the date following the date of death of the, member whether in service or after exit of employment or after retirement/ commencement of monthly member pension.
- Children Pension - Pension to two children of deceased member up to the age of 25 years in addition to widow.
- Orphan Pension - Two orphan children up to the age of 25. years entitled for monthly orphan pension equal to 75 % of the amount of widow pension.
- Nominee Pension - In case of unmarried members, a person nominated by the member will get pension equal to widow pension.

Commutation of Pension

Pension shall be allowed for commutation with effect from November 1998. Member can opt for commutation up to a maximum of one third of pension.

Withdrawal Benefits

A member is allowed withdrawal benefit where a minimum of pensionable service of 10 years has not been rendered on the date of exit/on attaining age of 58 years.

Administration

The pension scheme will be administered by the tripartite Central Board of Trustees set up under the Employees Provident Fund and Miscellaneous Provisions Act. The Regional Committees set up under the provident fund scheme shall advise the Regional Boards on matters relating to administration and implementation of the scheme in their respective regions.

27.7 THE EMPLOYEES' DEPOSIT-LINKED INSURANCE SCHEME, 1976

The scheme came into force from August 1, 1976. It is applicable to all factories/ establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies. All the provident fund member-employees, both in the exempted and unexempted establishments, are covered under this scheme. While the employees are not required to contribute to the Insurance Fund, the employers are required to pay contributions to it at the rate of 0.5% of the pay of the employers who are provident fund subscribers. The Central Government also contributes to the insurance fund at the rate of 0.25% of the pay in respect of the covered employee. The employers are also required to pay administrative charges to the insurance fund at the rate of 0.01% of the pay drawn by the employees, subject to a minimum of Rs. 2 per month. The Central Government also meets partly the expenses *in* connection with the administration of the insurance scheme by paying into the insurance fund an amount, at the rate of 0.005% of the pay drawn by the employee members subject to a minimum of Rs. 1 per month. The employers of exempted establishments are required to pay inspection charges at the rate of *0.02%* of the pay of the employee-members.

Under the Scheme, the nominees/members of the family of employees of covered establishments will get, in the event of death while in service, an additional amount equal to the average balance in the provident fund account of the deceased during the. preceding 12 months wherever the average provident fund balance is less than Rs. 25,000. In cases where the average provident fund balance of preceding twelve months exceeds Rs. 25,000 plus 25% of the amount in excess of Rs. 25,000 subject to a maximum of Rs. 35,000.

There is provision in the scheme *for* the exemption of factories/establishments which have *an* insurance scheme approved by government and conferring-more benefits than those provided under this statutory scheme, provided that a majority of the employees are in favour of such exemption. Subject to certain conditions, individual employees or class of employees may also be granted exemption. *The* Central Government is the appropriate authority to grant exemption from the Employees' Deposit-Linked Insurance Scheme under Section 17(2A).

27.8 DAMAGES AND PENALTIES

When an employer fails to remit the dues under the Scheme within 15 (20 days with 5 days grace period) days of the close of each month the employer will be liable, to pay penal damages as maybe determined by the Regional Commissioner (RC) not exceeding 37% of the arrears.

Any amount outstanding from the employer can be recovered by the Regional Commissioner as an arrear of land revenue. The powers for revenue recovery and issue of recovery certificates are vested with the Regional Commissioner (with effect from 1/7/90).

An employer who fails to remit the contributions and administrative charges and or submit the monthly and other periodical returns is liable to be prosecuted under Section 14 of the Act. For failure to remit employees share recovered `from the wages, the employer shall also *be* liable for prosecution under Section 406/409 of the I.P.C.

The employers are liable for action under the penal provisions of the Act in case they default compliance with the provisions of the Scheme. This is apart from the provisions relating to levy of penal damages and recovery of the outstanding dues as a revenue under the Revenue Recovery Act:

27.9 ADMINISTRATION

The Employees' Provident Fund Organisation is in charge of all the three schemes. These schemes are administered by the Central Board of Trustees, a tripartite body consisting of the chairman, nominees of the central and state governments and -employees' and employers' organizations The Central Provident Fund Commissioner is the chief executive officer of the organisation and secretary to the Central Board of Trustees. He is assisted by the Regional Provident Fund Commissioner, one in each state and in Delhi. The regional cominittees advise the Central Board on matters connected with the administration of the scheme in their respective States. Sub-regional provident fund offices have been opened in some region's to render better services to the subscribers of the fund. Provident fund inspectors are appointed to carry out inspections and to-perform an advisory role vis-a-vis the employers and workers in, different covered establishments. They conduct surveys to ensure that all coverable establishment/factories are covered under the Act. They also recommend and file prosecutions in the courts against defaulting employers and pursue these cases till their final disposal.

27.10 CASE LAW

It was held in the case *of Murarka Paint and Varnish Works Ltd. and Anr vs. Union of India* (1978 52 FJR 51) that: (a) delay as per Section 14B of the Act covered not only cases of failure to make payments in terms of the Act but also cases of delayed payments. A default under this section is made whenever there is a default in the stipulated payment of the contribution within the stipulated time; (b) the belated payment of contribution also amounted to a default and as such damages could be unposed under Section 14B of the Act; (c) there is no dual authority under the Section: one for the imposition of penalty and the other for the recovery of damages; (d) the power to recover damages from the employer is not the same as the power to impose penalties. Damages should have some correlation with the loss suffered as a result of the delayed payments. The authority must apply its mind and pass a speaking order. The discretion exercised by the Authority under the Act could be interfered with by a writ when such discretion is not exercised properly in accordance with law and the resultant order is not a speaking order indicating application of its mind to the facts and circumstances of the pays.

In this writ petition *Organo Chemical Industries vs. Union of India' (1979* II LLJ 416 SC), the scope and validity of Section 14B of the Act was examined. The court upheld the validity of the Section and assigned a larger fulfilling meaning to the term "damages". There is great social injury to the scheme when an employer defaults; so that the lash of the law is delivered when its purpose is frustrated. Naturally, damages will take an exemplary character and inflict a heavy blow on 'the shady defaulter.. Damages, as Imposed by Section 14B, includes a punitive sum quantified according to the circumstances of the case. The discretion to award damages could be exercised within the limits fixed by the statute. An order under Section 14B must-be a speaking order containing the reasons in support of it. While fixing the amount of damages, the Regional Provident Fund Commissioner usually takes into consideration various factors, viz., the number of defaults, the period of delay, the-frequency of defaults, and the amount involved.

Provident fund contributions are payable over arrears arising out of revision in wages in the process_ of settlement *(Prantiya V4dhyut Mandal Mazdoor Federation and Ors. vs. Rajasthan State Electricity Board and Ors. 1993 I* LLJ 222 SC).

Two factories constitute two independent establishments if they have separate registration under the Factories Act, separate profit and loss accounts, separate works managers and plant superintendents, and separate set-up of workmen or employees *(Dharamsi Morarji Chemicals Co. Ltd. vs. RPFC* 1985 I LLJ 433).

Educational institutions are governed by the provisions of the Employees' Provident Funds and Miscellaneous ProvisionsAct (D.A. *V. College .& Anr v .RPFC & Ors. 1988* II LLJ 218 S.C.).

No nomination can be made under the P.F. Scheme in favour of a person who is not a member of the family. Brother is not a member of the family within the meaning of the word "family" as defined in *the* scheme and hence any such nomination made is invalid (N.G. *Commissarial vs. Central Bank of India and Ors. 199341* LLJ 98).

Provident fund,contributions are payable over arrears arisen -out of revision in wages in the process of settlement *(Prantiya Vtdhyut Mandal Mazdoor Federation & Ors. v Rajasthan State Electricity Board & Ors. 19931* LLJ 222 S.C.).

Encashment of leave would-be covered by basic wages for calculating towards provident fund *(Hindustan Lever Employees' Union v RPFC & Anr.* 1995 II LLJ 279).

Under Section 14-B of the PF Act penalty has to be levied for delay in remittance of.,

provident fund dues. No damages can be levied without actual assessment or determination of the laws sustained by the department or organisation (1996, Ii LLJ ' 1202).

27.11 SELF-ASSESSMENT QUESTIONS

1. What is the object of the Employees' provident Funds and Miscellaneous provisions Act, 1952 ?
2. Which are the establishments covered by the Act?
3. What are the retiral benefits payable under the Act?
4. Are there any establishments to which the Act is not applicable at all ?
5. What are the various modes in which the Central Provident Fund Commissioner can recover arrears of any amount due from any employer under section 8 of the Act ?
6. Can the amount standing to the credit of any member in the Fund be assigned, charged or attached?
7. What are the powers of the Inspectors appointed under the Act ?
8. If any establishment has departments or branches, are these departments or branches, to be treated as separate establishments or parts of the same establishments ?
9. What are the offences under the Act and what is the punishment for them?
10. Is any damage leviable on the-employer delaying any payment due from him under the Act or the Schemes ?
11. Could the employer be punished under section 14-B in case the remittance of contribution by him is delayed in a bank or post office?
12. Who is eligible to become a member of the Fund?
13. Are the persons employed by or through a contractor covered under the Scheme?
14. What is the contribution payable by the employer and the employee under the Scheme?
15. Is it permissible for any member to contribute at a rate higher than the rate of 8 1/ 3 percent ?
16. Is any interest payable on the Provident Fund accumulations of a member?
17. What are the benefits provided under the Scheme?
18. Who is entitled to receive the accumulations in the Provident Fund account of a deceased member

27.12 ANSWERS TO CHECK YOUR PROGRESS

Write "True or "False" against the following statements:

( ) 1. Once the Act is applied, it does not cease to be applicable even if the number of employees falls below 20.

( ) 2. Employees drawing a pay not exceeding Rs. 3,500/- per month are eligible for membership of the fund.

( ) 3. When a member leaves service in one establishment and obtains re-employment in another establishment, whether exempted or unexempted, in the same region or in another region, he is required to apply for the transfer of his provident fund account to the Regional Provident Fund

( ) 4. The Central Government is empowered to grant exemption to any class`-of establishments from the operation of the Act for a specified period, on financial or other grounds.

( ) 5. "The employees and the employers are required to pay contribution to the Deposit-Linked Insurance Scheme.

( ) 6. Contract labour is covered under the Act

( ) 7. If for a period of one day in a year 20 or more persons were employed its the establishment that will be sufficient to -attract the provisions of the Act.

( ) 8. There is no infancy period for the purpose of calculation of the establishment of a new factory

( ) 9. As the power of the Regional Provident. Fund Commissioner to impose damages is a quasi-judicial function, an order under Section 14(b) must be a speaking order containing the reasons in support of it.

( ) 10. If a company having a factory at Guindi has got administrative offices at Chennai and Mumbai; they are to be treated as "one unit for the purpose of determining the applicability of the Act.

( ) 11. An employer is liable to pay provident fund contribution even in such circumstances when he was unable to pay wages to his employees for reasons beyond his control.

( ) 12. A charitable trust founded for the uplift of women, supplies raw materials to individual women in order to prepare eatables which are sold by the trust. The women are paid on a piece the trust, The trust is not covered by the EPF Act.

Answers:

1.	True		7.	True
2.	False		8.	True
3.	True		9.	True
4.	True		10.	True
5.	False		11	True
6.	True		12.	False

27.13 FURTHER READINGS

Bare Acton *the Employees' Provident Funds and Miscellaneous* ProvislonsAct,1952 (latest edition),

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