

THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

(Act 19 of 1952, dt. 4-3-1952)

[As amended by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), dt. 9-8-2019, w.e.f. 31-10-2019 vide SO 2889(E), dt. 9-8-2019]

An Act to provide for the institution of provident funds ¹[, ²[pension fund] and deposit linked insurance fund] for employees in factories and other establishments.

Be it enacted by Parliament as follows:—

1. Short title, extent and application

³[(1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.]

(2) It extends to the whole of India ⁴[xxx].

⁵[(3) Subject to the provisions contained in section 16, it applies,—

- (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which ⁶[twenty] or more persons are employed, and
- (b) to any other establishment employing ⁵[twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify⁷ in this behalf:

PROVIDED that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette⁸, apply the provisions of this Act to any establishment employing such number of persons less than ⁵[twenty] as may be specified in the notification.]

⁹[(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.]

1 Substituted for "and family pension fund" by Act 99 of 1976, w.e.f. 1-8-1976.

2 Substituted for "Family Pension Fund" by Amendment Act 25 of 1996, w.r.e.f. 16-11-1995, consequent to substitution of earlier ss. 6A and 6B by the new s. 6A.

3 Substituted by Amendment Act 99 of 1976, w.e.f. 1-8-1976.

4 Words "except the State of Jammu and Kashmir" omitted by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), dt. 9-8-2019, w.e.f. 31-10-2019 vide SO 2889(E), dt. 9-8-2019.

5 Substituted by Amendment Act 94 of 1956, w.e.f. 28-12-1956.

6 Substituted for "fifty" by Amendment Act 46 of 1960, w.e.f. 31-12-1960.

7 The Central Govt. vide SO 30(E), dt. 8-1-2011 specifies :
"Municipal Councils and Municipal Corporations constituted under sub-clauses (b) and (c) of clause (1) of Art. 243-Q of the Constitution of India."

8 Vide SO 3962(E), dt. 31-10-2019, the Central Government hereby extends the provisions of the said Act to apply to the establishments, employing ten or more persons and covered under the provisions of the erstwhile the Jammu and Kashmir Employees' Provident Funds and Miscellaneous Provisions Act, 1961 (XV of 1961), as it stood before its repeal by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), with effect from the 1st Day of January, 2020.

9 Substituted by Amendment Act 33 of 1988, w.e.f. 1-8-1988.

¹[(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

²[xxx]

COMMENTS

Section 1(5) applies only in the case where the establishment is continuously in existence and it has no intention to close the unit. The whole scheme of the Act is, that, when there are certain manufacturing activities and those activities are going on, the Act would apply. There is no provision which makes the Act applicable even to a closed unit.—*Bomin Private Ltd. v. Assistant Provident Fund Commissioner 2011 (128) FLR 1092 (Gujarat H.C.)*

The word “establishment” is used as genus, of which a factory is a specie. It may be that to a certain extent the provisions of section 4 may overlap the powers of the Government under section 1(3)(b). There is nothing inconsistent in the scheme of the Act with the view that section 1(3)(b) applies to all establishments whether such establishments are or are not factories.—*Thankamma Baby v. E.P.F. Appellate Tribunal, New Delhi 2010 (127) FLR 353 (Kerala H.C.)*

Section 1(3) of the Act provides that subject to the provisions contained in section 16, the Act shall apply to every establishment which is a factory or any industry specified in Schedule I and in which twenty or more persons or class of such establishments which the Central Government may by notification in the Official Gazette, specify in this behalf, provided that the Central Government may, after giving not less than two months’ notice of its intention to do so, by notification in the Official Gazette, apply the provisions of the Act to any establishment employing such number of persons less than twenty as may be specified in the notification.—*Bhikhari Chandra Pradhan v. E.P.F. Organisation 2009 (123) FLR 364 (Calcutta H.C.)*

Section 1(3) of the Act provides that section 16 of the Act shall apply to every establishment which is a factory engaged in any industry specified under Schedule I.—*Bomin Private Ltd. v. Assistant Provident Fund Commissioner 2011 (128) FLR 1092 (Gujarat H.C.)*

The Act makes it incumbent on the employer to deposit its share and that of its employees, and the Commissioner has to take prompt action against those who are responsible for default or delay in complying with the Act.—*Deepak Kumar Sahu v. Orissa State Road Transport Corpn. 1999-I-LLJ-1039 (Ori)*

For an establishment being in process of winding up, pure and simple, neither engaged in any industrial activity specified in Schedule I nor specifically notified under s. 1(3)(b) of the Act, the Provident Funds Act (as well as the ESI Act) was not applicable and the official liquidator was not liable for contribution under the Act.—*In re Rohtas Industries Ltd. (in liquidation) 1999-II-LLJ-222 (Pat)*

The applicability of the provisions of the Act, cannot be made to depend upon the magnitude of business, an establishment does in a particular field of activity. Once an establishment answers the description given in any of the items mentioned in the notification, it attracts the application of the provisions of the Act, regardless of whether it has actually done any business and if so, the magnitude thereof. The test of dominant purpose has no application to the nature of the activities being carried on by the petitioner which can be reasonably treated as trading and commercial activities. In *Andhra University v. RPFC 1985 (51) FLR 605 (SC)*, the Supreme Court observed that in construing the provisions of the Act, it is to bear in mind that it is a beneficent piece of social welfare legislation, aimed at promoting and securing the well-being of the employees and the court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act. Once it is found that there is an establishment which is a ‘factory’ engaged in an “industry”, specified in Schedule I and employing 20 or more persons, the provisions of the Act will get attracted to the case and it makes no difference to this legal position that the establishment is run by a larger organisation which may be carrying on other additional activities falling outside the Act.

Under section 1(3)(a) r/w Sch. 1 of the Act, if more than one industry is being carried on by the factory which falls under Schedule 1, and its numerical strength satisfies the prescribed test, it will be held to be an establishment. The “dominant and primary industry character” will determine

1 Inserted by Amendment Act 46 of 1960 w.e.f. 31-12-1960.

2 Proviso omitted by Act 16 of 1971, w.e.f. 23-4-1971.

the question whether a factory is an establishment under section 1(3)(a) of the Act or not. Petitioner and two other concerns were engaged in trading and commercial activities. The selected entry under the Schedule covered them. It was held that section 1(3)(a) provisions r/w Schedule 1 would be applicable to this case—*Ishwarbhai Gokulbhai Surti v. K.M. Bhatt 2002 (94) FLR 1129 (Guj. HC)*. The provisions of section 1(3) apply if more than 20 persons had been employed by the establishment. The provisions of the Act are applicable if there are less than 20 persons and employer forms the part of larger establishment—*Tinplate Company of India Ltd. v. Presiding Officer, Employees' Provident Funds Appellate Tribunal, New Delhi 2003 (97) FLR 923 (Jha. HC)*

The writ petitioner (Respondent) had a factory at Yeyyadi, Mangalore and manufactured weighing scales. Respondent also had two shops at Mangalore and Bangalore with six employees each. Factory maintained separate account books, balance sheets and trading accounts. There was no financial or functional dependency between the factory and the two shops. It was held that error was made by the appellant in clubbing together shops and factory for making the Act's provisions applicable—*Regional Provident Fund Commissioner Mangalore v. B Ganapathy Bhandarkar 2003 (98) FLR 987 (Karn. HC)*

In *Gandhi Vinita Ashram v. PFC 1996 (1) CLR 1140 (P&H)*, the petitioner-ashram was providing training to widows and destitute females. To comply with the provisions of the Act on the ground as directed by the Provident Fund Authority to the petitioner that it is an establishment engaged in textile industry. It was held that the trainees are not employees. No relationship of employer and employee, so the trainees are not coming within the ambit of this Act.

Where establishment carrying on business of equipment leasing and merchant banking besides other objects, claimed to have employed nearly 120 persons in connection with its business for whose benefit it has framed a provident fund scheme, the Karnataka High Court held, in *Canara Bank Financial Services Ltd. v. RPFC 1995 (71) FLR 446 (Kar)* that the social welfare purpose behind the legislation, and the ever increasing horizons and the myriad types of activities which are taking shape in the field of modern commerce, demand a liberal and more purposeful interpretation of the term "commission agent". Any activity which is undertaken on behalf of another, with an element of a compensatory payment of work so done by the agent and relatable or proportionate to the magnitude of the assignment, should fall within the meaning of the term "commission agent". When seen in that context the petitioner's merchant banking activity would certainly fall in place and would, therefore, qualify for being classified as trading or commercial activity within the meaning of entry 11 of the notification in question.

The Act was extended to forwarding and clearing agents of cargo by a notification. It was held that notification did not cover the "courier services establishments"—*Unnikrishnan Nair v. Regional Provident Fund Commissioner, 2003 1 LLJ 377 Ker. HC*.

Section 1(3)(b) read with the section 16 of the Act, the Central Govt. specified vide SO 444(E), dt. 10-2-2016 that the said Act shall apply to all banks employing twenty or more number of persons as a class of establishment in respect of those employees who are not entitled to the benefit of Contributory Provident Fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government or by the respective banks established under the Banking Regulations Act, 1949 (10 of 1949).

2. Definitions

In this Act, unless the context otherwise requires,—

¹[(a) "appropriate government" means-

- (i) in relation to an establishment belonging to, or under the control of, the Central Government or in relation to an establishment connected with a railway company, a major port, a mine or an oilfield or a controlled industry,²[or in relation to an establishment having departments or branches in more than one State], the Central Government ; and

1 Substituted by Amendment Act 22 of 1958 w.e.f. 18-5-1958.

2 Inserted by Amendment Act 22 of 1965 w.r.e.f. 24-11-1964.

- (ii) in relation to any other establishment, the State Government];
- ¹[(aa) “authorised officer” means the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette] ;
- (b) “basic wages” means all emoluments which are earned by an employee while on duty or ²[on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include :
- (i) the cash value of any food concession;
- (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- (iii) any presents made by the employer;
- (c) “contribution” means a contribution payable in respect of a member under a scheme ³[or the contribution payable in respect of an employee to whom the Insurance Scheme applies] ;
- (d) “controlled industry” means any industry the control of which by the Union has been declared by a Central Act to be expedient in the public interest;
- ⁴[(e) “employer” means :
- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, 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 under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948, the person so named; and
- (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent];
- (f) “employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of ⁵[an establishment], and who gets his wages directly or indirectly from the employer, ⁶[and includes any person—
- (i) employed by or through a contractor in or in connection with the work of the establishment;

1 Inserted by Amendment Act 33 of 1988, w.e.f. 1-8-1988.

2 Substituted for “on leave with wages”, *ibid.*

3 Inserted by Amendment Act 99 of 1976, w.e.f. 1-8-1976.

4 Substituted by Amendment Act 94 of 1956, w.e.f. 28-12-1956.

5 Substituted for “a factory”, *ibid.*

6 Substituted for the expression “and includes any person employed by or through a contractor in or in connection with the work of the establishment” by Amendment Act 33 of 1988, w.e.f. 1-8-1988.

- (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment];
- ¹[(ff) “exempted employee” means an employee to whom a Scheme ²[or the Insurance Scheme, as the case may be,] would, but for the exemption granted under ³[xxx] section 17, have applied ;
- (fff) “exempted establishment” means ⁴[an establishment] in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme, as the case may be, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein] ;
- (g) “factory” means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power;
- ⁵[(gg) xxx
(ggg) xxx]
- (h) “Fund” means the provident fund established under a Scheme;
- (i) “industry” means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4;
- ⁶[(ia) “Insurance Fund” means the Deposit-linked Insurance Fund established under sub-section (2) of section 6C;
- (ib) “Insurance Scheme” means the Employees’ Deposit-linked Insurance Scheme framed under sub-section (1) of section 6C];
- ⁷⁶[(ic)] “manufacture” or “manufacturing process” means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal];
- (j) “member” means a member of the fund;
- (k) “occupier of a factory” means the person who has ultimate control over the affairs of the factory, and, where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;
- ⁸[(kA) “Pension Fund” means the Employees’ Pension Fund established under sub-section (2) of section 6A;
- (kB) “Pension Scheme” means the Employees’ Pension Scheme framed under sub-section (1) of section 6A;]
- ⁹[(kC) “prescribed” means prescribed by rules made under this Act;

1 Clauses (ff) and (fff) inserted by Amendment Act 37 of 1953, w.e.f. 12-12-1953.

2 Inserted by Amendment Act 99 of 1976, w.e.f. 1-8-1976.

3 Words, brackets and figure “sub-s. (1) of”, omitted by Amendment Act 28 of 1963, w.e.f. 30-11-1963.

4 Substituted for “a factory” by Amendment Act 94 of 1956, w.e.f. 28-12-1956.

5 Omitted by Amendment Act of 1996, w.r.e.f. 16-11-1995.

6 Clause (ia) re-lettered as clause (ic) and clauses (ia) and (ib) inserted before clause (ic) as so re-lettered, by Amendment Act 99 of 1976, w.e.f. 1-8-1976.

7 Substituted by Amendment Act 28 of 1963, w.e.f. 30-11-1963.

8 Inserted by Amendment Act of 1996, w.r.e.f. 16-11-1995.

9 Inserted by Amendment Act 33 of 1988, w.e.f. 1-8-1988.

(kD) "Recovery Officer" means any officer of the Central Government, State Government or the Board of Trustees constituted under section 5A, who may be authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a Recovery Officer under this Act;]

¹[(l) "scheme" means the Employees' Provident Fund Scheme framed under section 5];

²[(ll) "superannuation", in relation to an employee, who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years"];]

³[(m) "Tribunal" means the Industrial Tribunal referred to in section 7D.]

COMMENTS

Section 2(b) defines "basic wages" to mean all emoluments which are earned by employees while on duty or in accordance with the terms of the contract of employment and which are paid or payable in cash to them.—*Delhi Press Patra Prakashan Ltd. v. Regional Provident Fund Commissioner 2010 (124) FLR 770 (Delhi H.C.)*

Basic wages are the emoluments earned by an employee in terms of the contract of employment paid or payable in cash. However, it excludes the cash value of any food concession. The basic wages do not also include dearness allowances under section 2(b) of the E.P.F. Act. The dearness allowance shall be in cash payments by any name on account of rise in the cost of living.—*Regional Provident Fund Commissioner, Tamil Nadu v. Wipro Limited 2009 (122) FLR 1036 (Madras H.C.)*

Section 2(f) defines the word "employee" to mean 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 his 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 etc. An interpretation of the above definition clearly shows that the contract for the purpose of section 2(f) between the establishment and the contractor must be a contract by which a contractor agrees and brings labour to be employed by the establishment. The contractor for the purpose of section 2(f) is purely a labour contractor and not an independent contractor who contracts to deliver a finished product to the establishment and who for the purpose of manufacture of such a finished product, engages labour for his own purposes. A Division Bench of Andhra Pradesh High Court in *Karachi Bakery v. Regional Provident Fund Commissioner 1999(3) LLJ (Supp) 151*, took the view that the words "whether they are employed by or through a contractor in or in connection with the work of the establishment", postulate that such persons must be employed by or through a contractor as contract labour. In other words, the contract for the purpose of section 2(f) between the establishment and the contractor is by which a contractor agrees and brings labour to be employed by the establishment. The contractor for the purposes of section 2(f) is purely a labour contractor and not an independent contractor who contracts to deliver a finished product to the establishment and who for the purposes of manufacture of such a finished product, engages labour for his own purposes.—*Cuttack Development Authority, Cuttack v. Regional Provident Fund Commissioner 2010 (124) FLR 990 (Orissa H.C.)*

A person employed for some days as a daily wager or as a casual or a temporary worker or otherwise will not be covered under the term "employee" to gain benefits under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act. It is clear and coherent that employment of a few persons on account of some emergency or for a very short period necessitated

1 Substituted by Amendment Act 16 of 1971, w.e.f. 23-4-1971.

2 Inserted by Act 25 of 1996, w.r.e.f. 16-11-1995.

3 Substituted by Finance Act, 2017 (7 of 2017), dt. 31-3-2017, w.e.f. 26-5-2017 vide SO 1696(E), dt. 26-5-2017. Prior to substitution, clause (m) read as under:

"(m) "Tribunal" means the Employees' Provident Funds Appellate Tribunal constituted under section 7D"

by some abnormal contingency which is not a regular feature of the business of the establishment and which does not reflect its business prosperity or its financial capacity and stability from which it can reasonably be concluded that the establishment can in the normal way bear the burden of contribution towards the Provident Fund under the Act would not be covered by the definition of employment under the Act.—*Grand Chemical Works v. Presiding Officer, E.P.F. Appellate Tribunal 2009 (122) FLR 1093 (Delhi H.C.)*

Section 2(f)(iv) provides that an apprentice shall be an excluded employee till he becomes a full-fledged employee.—*Central Provident Fund Commissioner v. Modern Transportation Consultancy Service (Pvt.) Ltd. 2009 (120) FLR 712 (Calcutta H.C.)*

Section 2(g) defines “factory” as a premises in any part of which a manufacturing process is being carried on or is ordinarily so carried.—*Bomin Private Ltd. v. Assistant Provident Fund Commissioner 2011 (128) FLR 1092 (Gujarat H.C.)*

The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee’s contribution from his wages which together with his own contribution as well as an administrative charge of such percentage of the pay (basic wages, dearness allowance, retaining allowance), if any, and cash value of food concessions admissible thereon for the time being payable to the employees other than an excluded employee, the Central Government may fix. He shall within fifteen days of the close of every month pay the same to the fund by separate bank drafts or cheques on account of contributions and administrative charge. The employer shall pay to the fund the amount mentioned above by means of Reserve Bank of India. The employer shall forward to the Commissioner within twenty-five days of the close of the month, a monthly abstract in such form as the Commissioner may specify showing the aggregate amount of recoveries made from the wages of all the members and the aggregate amount contributed by the employer in respect of all such members for the month.—*Delhi Press Patra Prakashan Ltd. v. Regional Provident Fund Commissioner 2010 (124) FLR 770 (Delhi H.C.)*

Section 2(aa) of the Act defines the term “authorized officer” to mean the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner or such other officers authorized by the Central Government, by notification in the Official Gazette.—*Maharashtra State Co-operative Bank Ltd. v. Assistant Provident Fund Commissioner 2009 (123) FLR 653 (SC)*

The term “Fund” has been defined in section 2(h) to mean the provident fund established under a scheme.—*Maharashtra State Co-operative Bank Ltd. v. Assistant Provident Fund Commissioner 2009 (123) FLR 653 (SC)*

The term “Recovery Officer” has been defined in section 2(kb) means any officer of the Central Government, State Government or the Board of Trustees constituted under section 5A, who may be authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a Recovery Officer under this Act.—*Maharashtra State Co-operative Bank Ltd. v. Assistant Provident Fund Commissioner 2009 (123) FLR 653 (SC)*

A Production Bonus Scheme should be tested so as to get covered by exception (ii) of s. 2(b) of the EPF Act, 1952. In order to become a genuine Production Bonus Scheme, it should offer production bonus to the workmen who put in extra output, either collectively on the basis of total extra output on a sliding scale or individually to a given number of workmen who by their own efforts earn such bonus. In each case the payment of bonus cannot be of a fixed nature having no nexus with the quantity of extra output produced by them. In *Daily Pratap v. RPFC 1999-I-LLJ-1 (SC)*, the scheme relied on by the appellants did not fulfil the above mentioned legal test and it did not therefore attract the exception (ii) of s. 2(b).

What is required to consider a person to be employer is the control over the affairs of the establishment in which or in respect of which any person is employed and not direct or indirect control over the functioning of employees by such person. The control of affairs of the establishment in which or in respect of which a person is employed has different connotation than control or supervision over the employees concerned in the context in which the term has been used for the purpose of giving effect to the provisions of the Act of 1952 which is a beneficial legislation, extending a scheme of

economic security of future, by way of making provision for by accumulations in a provident fund through contributions from employees as well as employer. Whatever may have been the doubts about the person's employment through contractor prior to its amendment by inserting the words 'and includes any person employed by or through a contractor in or in connection with the work of the establishment' about the status of a person employed through contractor and getting his wages directly from him, there cannot be any ambiguity, in the face of clause (i) of section 2(f) about the status of a person employed by or through a contractor in or in connection with the work of the establishment.—*Gujarat State Civil Supplies Corpn. Ltd. v. RPFC 1999 (83) FLR 875 (Guj)*

Definition of "employer" under s. 2(e) does not include directors of a company and they cannot be prosecuted for default of company in depositing PF amounts of its employees.—*Gupta, R.P. v. State of Bihar 2000-I-LLJ-1138 (Pat)*

The definition of 'employers' includes the applicants who are the Director and Deputy General Manager and have control over the affairs of establishment. The definition of 'employer' covers the applicants who are the Director and Deputy General manager of the establishment and have complete control over the establishment affairs—*Aniruddha Kumar Dhote v. State of Maharashtra 2002 (94) FLR 44) Bom. HC.*

On the question whether the artisans engaged by petitioner-Sarvodaya Sangh is covered by the Act, the petitioner contended that the said artisans were not the employees of the Sanghs prayed for a writ of mandamus to the respondents to forbear from implementing the Act against the petitioner. Dismissing the petition, the High Court observed that except the artisans all the units of the Sarvodaya Sanghs had been brought under the purview of the EPF Act, 1952. The artisans were home workers to whom the raw materials were supplied by the Sanghs and their payment would vary from day to day and week to week. The High Court was of the view that the artisans were 'employees' within the meaning of the statutory definition and the difference in value of the finished products and raw materials was nothing but wages paid to the workers (artisans). The court also held that the object of the Act was to provide social security cover to the workers and for the applicability of the Act an establishment need not be a profit earning one.

In *Enfield India Ltd. v. RPFC 2000 (85) FLR 519 (Mad)*, it was held that, s. 2(f) covers employees even if employed by a contractor. The court observed that Thor Power System is a sole contractor of Enfield India Ltd. and hence in terms of s. 2(f) read with para 26 of the EPF Scheme, the petitioner is liable for extending the provident fund benefits to the employees engaged through Thor Power System, a sole contractor for the petitioner. The definition of 'employees' include contractor employees also. "Employee" 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 his wages directly or indirectly and includes any person (i) employed by or through contractor in or in connection with the work of an establishment; (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing order of the establishment. The employees of the contractor firm are employees of the petitioner only as per the definition since they were doing the work of the petitioner. Therefore, it is a clear case where the position of the employees engaged by the Thor Power System are squarely falling within the ambit of s. 2(f) and termed as employees of the petitioner-establishment.

A person doing work of the principal employer, even though employed by contractor is also an employee covered by s. 2(f)—*Enfield India v. RPFC, 2000-I-LLJ-1612 (Mad)*

In *Sri Rama Vilas Service Ltd. v. RPFC, 2000-I-LLJ-709 (Mad)*, the question whether trainees are employees, the court held that they are not employees and the stipend paid to them are not wages. In that case, the petitioner-company challenged an order of the Provident Fund Commissioner holding that trainees in the company were employees and as a consequence of which provident fund contribution was demanded. The High Court observed that the impugned order was vitiated by errors apparent on the face of the record. The said order did not notice that the trainees were paid only stipend and were not eligible for any other benefits, monetary or otherwise which were extended to permanent employees. Further the trainees were recruited for a specified period under a Training Scheme of the company and there was no guarantee of employment after the completion of the training period and traineeship could be terminated at any time without notice.

It was alleged that persons such as Nuns and sisters in Hospital Service are not 'employees'. High Court gave directions for approaching the government for exemption under the provisions of section 17 of the Act—*Lohardaga Charitable Ursuline Society v. Union of India and Others*, 2003-II-LLJ 554) Jhar. HC

In *Katari Colouring Factory v. RPFC*, 2000-I-LLJ-1041 (Del), the petitioner firm engaged in manufacturing ink challenged an order of the first respondent which was confirmed by the Central Government holding the employees of a certain Umrao Ali were the employees of the petitioner, as the said Umrao Ali was a contractor of the petitioner and was mainly working in, and in connection with, the work of the petitioner and hence, holding the EPF Act, 1952 applicable to the petitioner, the petitioner was asked to deposit the amount of provident fund due under the Act. The High Court dismissed the writ petition, affirming the impugned finding of the respondents.

Where there is no material placed to show agreement between parties rendering appellant corporation employer of workers in question the matter is remitted for fresh hearing.—*Food Corporation of India v. Union of India*, 1998-I-LLJ (SC) 1154. In case of company, person in charge of, and responsible to the company for conduct of its business is liable to be proceeded against for offence under the Act, committed by company.—*B.I.C. Ltd. Cawnpore Woollen Mills Branch v. Provident Fund Inspector* 1998-II-LLJ (All) 1145. When members of a co-operative society do work in connection with that society and wages are paid to them, there is employer-employee relationship between the society and the workers.—*Sri Madathupatti Weavers Co-operative Production & Sales Society Ltd. v. RPFC*, 1998-I-LLJ (Mad) 824

The proper test to determine 'appropriate government' in relation to an industrial dispute is to see where the dispute substantially arose. If a workman is working in a specified establishment, the dispute can be taken to arise only at the place where the establishment exists. The mere fact that the head office exercises administrative control over the workman does not confer jurisdiction on the government within whose territorial jurisdiction the head office is located.—*Vide Howrah Motor Co. Ltd. v. Labour Court* (1980) 1 LLJ 286 (Ori).

To decide the relationship between the employer and the workman what is relevant to consider is whether the workman attends the place of work of the employer and works there and whether he can be removed if the work is not satisfactory. In the determination of the employer-employee relationship, control is obviously an important factor, and in many cases, it may be decisive factor. The question is not whether in practice the work is done subject to the direction and control exercised by actual supervision but whether the ultimate authority over the man in the performance of his work, resides in the employer so that he was subject to latter's order and direction. —*Silver Jubilee Tailoring House v. Chief Inspector, Shops & Establishment*, AIR 1974 SC 7, *New Street Textiles v. Union of India* 1975 KLT 426.

In view of the definition of "basic wages" if an employee who has earned leave goes on leave, his salary or wages can obviously fall within the term of "basic wages". There is no good ground to hold that in the event of his not availing the leave but encashing it, the amount which he gets in such encashment should be excluded from the basic wages as defined in s. 2(b) of Employees' Provident Funds Act. Consequently the encashment of leave must be included in the basic wages for the purpose of calculating the contribution towards Provident Fund.—*Hindustan Lever Employees' Union v. RPFC*, 1995 II LLJ 279 (Bom)

Members of a society registered under Societies Registration Act and Bombay Public Trust Act working for wages in its establishment at Jabalpur are held to be employees of the establishment within the meaning of s. 2(f) of Act entitled to benefit thereof, as members of such society are not employers, in *Mahila Griha Udyog Lijjad Papad v. Union of India*, 1994 (68) FLR 1129 (MP).

Priest : Not an employee—There is no contract of employment between the teaching priests and the seminary. They are paid no wages, basic or otherwise. They are paid an allowance that befits their condition, taking into account the nature of office and the conditions of time and place. Control and direction which an employer possesses and which, in a conventional sense, is the prerogative of the employer, is therefore absent in case of Priests who render religious discourses at the seminary.

They are not employees and do not meet the requirement of employment for the purpose of the Act—*Reverend Father Agnelo Gracias v. RPFC, Maharashtra & Goa 2005 (104) FLR 902 (Bom.HC)*

¹[2A. **Establishment to include all departments and branches**

For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.]

COMMENTS

In *Kadamba Sub-urban Transport Corpn. Ltd. v. Asstt. PF Commissioner, 2000-I-LLJ-624 (Bom)*, the petitioner-company challenged in this petition an order of the respondent-PF Commissioner holding the petitioner's establishment was covered by s. 2A, right from its inception in 1988 and was not entitled to infancy period benefit under s. 16(1)(d). The High Court, quashing the order, observed that it was not sufficient to conclude that there was functional integrity between the petitioner company and the other company of which the petitioner company was held by the impugned order to be a Department/branch. It could not be said that the petitioner-company was so much dependent on the other company that if the latter closed down the former would not be able to survive.

In *Niton Industries v. Union of India, 2000 (85) FLR 536 (Bom)*, where there were three establishments having no functional integrity nor any financial proximity between them, the court held that they were independent establishments and they could not be clubbed to fasten liability to pay provident fund.

Where there are two establishments each of which can survive without the other, no functional integrity can be said to exist just because there is common ownership and both the units are in the same line of manufacturing same goods—*Niton Industries v. Union of India, 2000-I-LLJ-1518 (Bom)*

Common ownership cannot solely be the basis for clubbing of establishments—*Regional Provident Fund Commissioner, Mangalore v. B. Ganapathy Bhandarkar, 2003 III LLJ 356 (Kant. HC)*

Where there was ownership unity alongwith management and control between business units, it was held to be valid and proper to treat them as one establishment for P.F. Act purposes—*Hamdard (Wakf) Laboratory (India) v. K.L. Sehgal, Regional Provident Fund Commissioner and Others, 2003 III LLJ 439*

When activities of two establishments and workers of each are separate, one registered under the Shops and Establishment Act, and the other under the Factories Act, maintaining separate books of account, having separate managerial staff and neither exercising any supervisory, financial nor managerial control over the other, both units are separate though there is unity of ownership. Thus, in *Mumbai, Mazdoor Sangh v. RPFC 2000-I-LLJ-1225 (Bom)*, where the petitioner-sangh challenged an order of the first respondent-PF Commissioner holding two units of the second respondent, one engaged in trading activities, and the other in manufacturing umbrellas. The court observed that the factual position was that except for the fact that the second respondent owned the two units, there were several features indicating that they were different and separate establishments. The activities of the two units, their workers, their registration under statutes, books of account, managerial staff were all separate. The two did not have any inter-connection in the matter of supervision, finance or managerial control.

Prior to insertion of s. 2A by Amendment Act, 1960 w.e.f. 31-12-1960, there usually arose a doubt as to whether the applicability of the Act to an establishment would also extend to all departments and branches of the said establishment despite their locations. Sec. 2A put the controversy at rest by unequivocally laying down that where an establishment consists of different departments or has branches in the same premises or elsewhere, all such departments shall be treated as parts of the same establishment covered by the Act. Where an industrial undertaking has parts, branches, departments, units, etc. with different locations, near or distant, the question arises what tests should be applied for determining that constitutes one establishment. Several tests are referred to such as geographical proximity, unity of ownership, management and control, unit of employment and conditions of service, functional integrity, and lastly general unity of purpose. It is perhaps impossible

¹ Inserted by Amendment Act 46 of 1960, w.e. f. 31-12-1960.

to lay down any one test as absolute and invariable test in all cases. The real purpose of these tests is to find out the real relation between the parts, branches, units, etc. If in the true relation, they constitute one integrated whole, then we must say that the establishment is one. If on the contrary, they do not constitute one integrated whole, each unit is then a separate unit. The relation between the units has to be judged on facts proved having regard to the scheme and object of the statute.—*Vide Associated Cement Co. v. Their Workman (1960) 1 LLJ 8 SC.*

Common ownership by itself is not enough, unless evidence shows interconnection between units so as to allow inference of common supervisory, financial and managerial control.—*RPFC v. Dharamsi Morarji Chemical Co. Ltd., 1998-I-LLJ (SC) 1060.* Most important test for determining whether one unit is branch or department of another is that of functional integrity of finance, employment and labour.—*Varanasi Fan Industries (P) Ltd. v. RPFC, 1998-II-LLJ (MP) 1244*

Where it is evident that the factory was really started for the purpose of running one primary industry and it has undertaken other subsidiary industries only for the purpose of subserving or feeding the purposes and objects of the primary industry, in such a case the minor industries merely serve as departments of the primary industry. If there is a factory and in the same compound there are other minor industries which are independent and are not so integrated as to be treated as part of the same industry, the question of principal or dominant character of one industry and subsidiary character of other industries would not arise.—*Associated Industries (P) Ltd. v. RPF Commissioner, AIR 1964 SC 314.*

¹[3. Power to apply Act to an establishment which has a common provident fund with another establishment

Where immediately before this Act becomes applicable to an establishment there is in existence a provident fund which is common to the employees employed in that establishment and employees in any other establishment, the Central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall also apply to such other establishment.

COMMENTS

By s. 3, the Central Government is empowered to extend the provisions of the Act to an establishment having a common provident fund with another establishment prior to the commencement of the Act. Where an establishment having a provident fund has been split into three establishments due to partition, it was held in *Mohammed Kutty v. RPF Commissioner (1969) 2 LLJ 466 (Ker)* that if the partition is bona fide and the integrity of the mother establishment is broken and the separate establishment employs more than 20 persons, the Act will apply to such separate establishment and if the number of employees is below 20, the Act shall have no application. When in a factory there is a section engaged in the industry covered by Sch. I to the Act and other industries are not covered by the Schedule, the employees employed in the industry covered by the Schedule would only be entitled to the benefits of the provisions of the Act and the Regional Provident Fund Commissioner could not ask the employer to pay contributions for the workers engaged in the industry not covered by the Schedule.—*Nagpur Glass Works v. RPFC, AIR 1957 Bom 152.*

4. Power to add to Schedule I

(1) The Central Government may, by notification in the Official Gazette, add to Schedule I any other industry in respect of the employees whereof it is of opinion that a provident fund scheme should be framed under this Act, and thereupon the industry so added shall be deemed to be an industry specified in Schedule I for the purposes of this Act.

(2) All notifications under sub-section (1) shall be laid before Parliament, as soon as may be, after they are issued.

¹ Substituted by Act 94 of 1956.

COMMENTS

It is competent for the Central Government to extend the provisions of the Provident Fund Scheme to any industry by virtue of ss.4 and 7 and no separate scheme need be framed for every industry sought to be brought within the ambit of the Act. —*Nazeena Traders Ltd. v. RPF Commissioner, AIR 1965 AP 200*. Factories engaged in industries other than those mentioned in Sch. I may also thus be brought within the purview of the Act by a notification under s. 4, thus adding to Sch. I.—*AIR 1965 Ker 130*.

5. Employees' Provident Fund Scheme

¹[(1)] The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the ²[establishment] or class of ²[establishments] to which the said Scheme shall apply ³[and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.]

⁴[(1A)] The Fund shall vest in, and be administered by, the Central Board constituted under section 5A.

(1B) Subject to the provisions of this Act, a Scheme framed under sub-section (1) may provide for all or any of the matters specified in Sch. II.]

³[(2)] A Scheme framed under sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme.]

COMMENTS

The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Provident Funds Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the establishments or class of establishments to which the said scheme shall apply. This section further lays down that soon after framing of the scheme, a Fund shall be established in accordance with the provisions of the Act and the scheme.—*Maharashtra State Co-operative Bank Ltd. v. Assistant Provident Fund Commissioner 2009 (123) FLR 653 (SC)*

Sec. 5 empowers the Central Government to frame the Employees' Provident Funds Scheme for the purpose of establishing the provident fund benefits to the employees or to any class of employees and specify the establishments or class of establishments to which the said scheme shall apply. A scheme framed under this section must specify the factories to which it would apply and unless a factory is so specifically named the scheme cannot be applied to it. The word "specify" in s. 5(1) means there should be no room for uncertainty in mentioning or naming the establishment to which the scheme is to be applied. If any ground or any uncertainty exists, it will be deemed that a particular industry has been specified only after the doubt or uncertainty has been removed by following the procedure laid down in s. 19A (now replaced by ss. 20, 21 and 22).—*Mahavir Metal Manufacturing Co. v. RPFC, (1970) Lab IC 251*.

The employer becomes liable to pay contribution under the Act from the moment the Scheme is applied to the particular establishment or class of establishments by government notification. As soon as a communication is sent to the employer stating that the provisions of the Act and Scheme are made applicable to his establishment he becomes liable not only to remit contributions involving his share and the share of each employee to the provident fund but also to pay administrative charges. Administrative charges can be collected from the employer even for the period earlier to

1 Sec. 5 renumbered as sub-s. (1) thereof, by Amendment Act 37 of 1953, w.e.f. 12-12-1953.

2 Substituted for "factory" and "factories", respectively by Amendment Act 94 of 1956, w.e.f. 28-12-1956.

3 Inserted by Amendment Act 37 of 1953, w.e.f. 12-12-1953.

4 Inserted by Amendment Act 28 of 1963, w.e.f. 30-11-1963.

the date of communication from the date when the scheme became applicable to the establishment.—*Ramanujam Press v. RPF Commissioner, AIR 1970 Mad. 224.* Para 30 of the EPF Scheme, 1952 makes the employer liable in the first instance to pay employee's contribution and para 32 enjoins that the power of the employer to deduct, subsequently from the wages of the employee the amount paid by him as employee's share, is subject to the conditions that the deduction must be from the wages of the period in respect of which the employer has paid contribution payable by him as well as by the employee. The employer cannot recover in any other manner the contribution paid by him on behalf of an employee. Thus, while the employer's responsibility to pay the entire contribution in respect of each employee remains intact, the Scheme provides for him full reimbursement.—*Solanki Workshop v. RPF Commissioner, AIR 1963 MP 7.*

Where the employer fails to recover contributions from the employees and subsequently it is found that the contributions were due, the employer is bound to pay the same and it cannot be said that the employer cannot be made liable to pay the share of the employees with retrospective effect. The provisions as well as the scheme framed thereunder cast upon the employer an obligation to make contributions without any notice from the departmental authorities.—*Distt. Exhibitors Association v. UOI AIR 1991 SC 1381.*

¹[5A. Central Board

(1) The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, a Board of Trustees for the territories to which this Act extends (hereinafter in this Act referred to as the Central Board) consisting of the following ²[persons as members], namely :

- (a) ³[a Chairman and a Vice-Chairman] to be appointed by the Central Government;
- ⁴[(aa) the Central Provident Fund Commissioner, ex officio] ;
- (b) not more than five persons appointed by the Central Government from amongst its officials;
- (c) not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, appointed by the Central Government;
- (d) ⁵[ten persons] representing employers of the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employers as may be recognised by the Central Government in this behalf; and
- (e) ⁵[ten persons] representing employees in the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employees as may be recognised by the Central Government in this behalf.

(2) The terms and conditions subject to which a member of the Central Board may be appointed and the time, place and procedure of the meetings of the Central Board shall be such as may be provided for in the Scheme.

(3) The Central Board shall, ⁶[subject to the provisions of section 6A] ⁷[and section 6C], administer the fund vested in it in such manner as may be specified in the Scheme.

¹ Inserted by Amendment Act 28 of 1963, w.e.f. 30-11-1963.

² Substituted for "persons" by Amendment Act 33 of 1988, w.e.f. 1-8-1988.

³ Substituted for "a Chairman", *ibid.*

⁴ Inserted, *ibid.*

⁵ Substituted for "six persons", *ibid.*

⁶ Inserted by Amendment Act 16 of 1971, w.e.f. 23-4-1971.

⁷ Inserted by Amendment Act 99 of 1976, w.e.f. 1-8-1976.

(4) The Central Board shall perform such other functions as it may be required to perform by or under any provisions of the Scheme, ¹[the, ²[Pension Scheme and the Insurance Scheme].

³[(5) The Central Board shall maintain proper accounts of its income and expenditure in such form and in such manner as the Central Government may, after consultation with the Comptroller and Auditor-General of India, specify in the Scheme.

(6) The accounts of the Central Board shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Central Board to the Comptroller and Auditor-General of India.

(7) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Central Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has, in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers, documents and papers and inspect any of the offices of the Central Board.

(8) The accounts of the Central Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Central Board which shall forward the same to the Central Government along with its comments on the report of the Comptroller and Auditor-General.

(9) It shall be the duty of the Central Board to submit also to the Central Government an annual report of its work and activities and the Central Government shall cause a copy of the annual report, the audited accounts together with the report of the Comptroller and Auditor-General of India and the comments of the Central Board thereon to be laid before each House of Parliament.]

COMMENTS

Section 5(1) provides that the fund shall vest in, and be administered by the Central Board constituted under section 5A. A bare perusal of section 5A shows that the Central Board is a very broad based authority having representatives of the Central Government, State Governments, employers of the establishments as well as representatives of employees in the establishments to which the scheme applies.—*Central Provident Fund Commissioner v. Modern Transportation Consultancy Service (Pvt.) Ltd.* 2009 (120) FLR 712 (Calcutta H.C.)

Though the power has been conferred on the Central Government to establish this statutory Board and to give directions to it in the matter of appointment of its officers, this power is derived from the Act itself and the Scheme framed thereunder and it does not flow from the Central Government itself. —*Vide (1983) Lab IC 1523*. The Executive Committee constituted under s. 5AA is intended to assist the Central Board in discharge of its functions. Just like the Central Board, the State Board is also constituted by the Central Government in consultation with the concerned State Government to exercise such powers and perform such functions as may be assigned to it by the Central Government from time to time.

The Board of Trustees under the name and style Central Board under s. 5A and the State Board constituted under s. 5B by the Central Government is a corporate entity within the meaning

¹ Substituted for "and the Family Pension Scheme" by Amendment Act 99 of 1976, w.e.f. 1-8-1976.

² Substituted for "family pension" by Amendment Act 25 of 1996, w.r.e.f. 16-11-1995.

³ Inserted by Amendment Act 33 of 1988, w.e.f. 1-8-1988.

of s. 2(7) of the Companies Act, which holds the moneys of its members as deposit by way of provident fund.—*Vide (1990) BBCJ 559.* This has been statutorily recognised by s. 5C.

By virtue of s. 5DD acts done, and proceedings of, the authorities constituted under ss. 5A, 5AA and 5B are not questionable on the ground merely of the existence of any vacancy is, or any defect in the constitution of the said authorities. By virtue of s. 5E, the Central Board is empowered to delegate its powers and functions to the Executive Committee or to the Chairman or to any officer specified in this behalf and no prior approval of the Central Government is necessary therefor.

¹[5AA. **Executive Committee**

(1) The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, an Executive Committee to assist the Central Board in the performance of its functions.

(2) The Executive Committee shall consist of the following persons as members, namely:—

- (a) a Chairman appointed by the Central Government from amongst the members of the Central Board;
- (b) two persons appointed by the Central Government from amongst the persons referred to in clause (b) of sub-section (1) of section 5A;
- (c) three persons appointed by the Central Government from amongst the persons referred to in clause (c) of sub-section (1) of section 5A;
- (d) three persons representing the employers elected by the Central Board from amongst the persons referred to in clause (d) of sub-section (1) of section 5A;
- (e) three persons representing the employees elected by the Central Board from amongst the persons referred to in clause (e) of sub-section (1) of section 5A;
- (f) the Central Provident Fund Commissioner, *ex officio*.

(3) The terms and conditions subject to which a member of the Central Board may be appointed or elected to the Executive Committee and the time, place and procedure of the meetings of the Executive Committee shall be such as may be provided for in the Scheme.]

CONSTITUTION OF EXECUTIVE COMMITTEE

Vide SO 772(E), dt. 20-2-2020, the Central Government hereby appoints, the following persons as members of the Executive Committee constituted under the said Act, in place of persons appointed vide notification of the Government of India in the Ministry of Labour and Employment number SO 3539(E), dated the 24th November, 2016 with effect from the date of publication of this notification in the Gazette of India, namely:—

- (a) Appointed under clause (a) of sub-section (2) of section 5AA.

Chairperson—

1. Secretary to the Government of India,
Ministry of Labour and Employment,
Shram Shakti Bhavan, New Delhi.
- (b) Appointed under clause (b) of sub-section (2) of section 5AA.
 2. Additional Secretary or Joint Secretary (Social Security),
Ministry of Labour and Employment,
Shram Shakti Bhavan, New Delhi.
 3. Additional Secretary or Joint Secretary and Financial Advisor,
Ministry of Labour and Employment,
Shram Shakti Bhavan, New Delhi.

¹ Inserted by Amendment Act 33 of 1988, w.e.f. 1-8-1988.

- (c) Appointed under clause (c) of sub-section (2) of section 5AA.
 - 4. Secretary to the Government of Uttar Pradesh, Labour Department, Lucknow.
 - 5. Secretary to the Government of Maharashtra, Industry, Labour and Energy Department, Mantralaya, Mumbai.
 - 6. Secretary to the Government of Haryana, Labour and Employment Department, Chandigarh.
- (d) Appointed under clause (d) of sub-section (2) of section 5AA.
 - 7. Shri Arun Chawla
 - 8. Shri Sougata Roy Choudhury
 - 9. Shri Govind Lele
- (e) Appointed under clause (e) of sub-section (2) of section 5AA
 - 10. Shri Virjesh Upadhyay
 - 11. Shri Sunkari Mallesham
 - 12. Shri Dilip Bhattacharya
- (f) Appointed under clause (f) of sub-section (2) of section 5AA
 - 13. Central Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Bhikaji Cama Place, New Delhi-110066.

¹[5B. State Board

(1) The Central Government may, after consultation with the Government of any State, by notification in the Official Gazette, constitute for that State a Board of Trustees (hereinafter in this Act referred to as the State Board) in such manner as may be provided for in the Scheme.

(2) A State Board shall exercise such powers and perform such duties as the Central Government may assign to it from time to time.

(3) The terms and conditions subject to which a member of a State Board may be appointed and the time, place and procedure of the meetings of a State Board shall be such as may be provided for in the Scheme.

5C. Board of Trustees to be body corporate

Every Board of Trustees constituted under section 5A or section 5B shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued.

5D. Appointment of officers

(1) The Central Government shall appoint a Central Provident Fund Commissioner who shall be the chief executive officer of the Central Board and shall be subject to the general control and superintendence of that Board.

(2) The Central Government may also appoint ²[a Financial Adviser and Chief Accounts Officer] to assist the Central Provident Fund Commissioner in the discharge of his duties.

(3) The Central Board may appoint, ³[subject to the maximum scale of pay, as may be specified in the Scheme, as many Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant Provident Fund Commissioners and] such other officers and employees as it

¹ Inserted by Amendment Act 28 of 1963, w.e.f. 30-11-1963.

² Substituted by Amendment Act 33 of 1988, w.e.f. 1-8-1988.

³ Inserted, *ibid.*

may consider necessary for the efficient administration of the Scheme, the ¹[Pension] Scheme and the Insurance Scheme.

(4) No appointment to ²[the post of the Central Provident Fund Commissioner or an Additional Central Provident Fund Commissioner or a Financial Adviser and Chief Accounts Officer or any other post under the Central Board carrying a scale of pay equivalent to the scale of pay of any Group 'A' or Group 'B' post under the Central Government] shall be made except after consultation with the Union Public Service Commission:

PROVIDED that no such consultation shall be necessary in regard to any such appointment

- (a) for a period not exceeding one year, or
- (b) if the person to be appointed is at the time of his appointment—
 - (i) a member of the Indian Administrative Service, or
 - (ii) in the service of the Central Government or a State Government or the Central Board in a ³[Group 'A' or Group 'B' post.]

(5) A State Board may, with the approval of the State Government concerned, appoint such staff as it may consider necessary.

(6) The method of recruitment, salary and allowances, discipline and other conditions of service of the Central Provident Fund Commissioner, ⁴[and the Financial Adviser and Chief Accounts Officer] shall be such as may be specified by the Central Government and such salary and allowances shall be paid out of the Fund.

⁵[(7)(a) The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay :

PROVIDED that where Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

- (b) In determining the corresponding scales of pay of officers and employees under cl. (a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final.]

⁶(8) The method of recruitment, salary and allowances, discipline and other conditions of service of officers and employees of a State Board shall be such as may be specified by that Board, with the approval of the State Government concerned.

1 Substituted for "Family Pension" by Act 25 of 1996, w.r.e.f. 16-11-1995.

2 Inserted by Amendment Act of 33 of 1988, w.e.f. 1-8-1988.

3 Substituted for "Class I or Class II post" by Amendment Act of 33 of 1988, w.e.f. 1-8-1988.

4 Substituted for "Deputy Provident Fund Commissioner and Regional Provident Fund Commissioner", *ibid.*

5 Substituted, *ibid.*

6 Refer Employees' Provident Fund Staff (Classification, Control and Appeal) Rules, 1971.

COMMENTS

Power of appointment of Regional Provident Fund Commissioner vests with the Central Government and his conditions of service are also regulated by the Central Government. Sec. 5D deals with the method of recruitment, pay and allowances, discipline and other conditions of service. By the mere fact that some of the officers of the provident fund organisation are appointed by the Central Government, the Organisation itself cannot be treated as the servant of the Central Government. —*Vide (1983) Lab IC 1523 (Kar)*. Sec. 5D deals with method of recruitment, pay and allowances, discipline and other conditions of service and does not deal with scheme of restructuring of the cadre or creation of post in Employees' Provident Funds Organisation.—*Vide (1991) 16 ATC 61 (Mad)*.

¹**5DD. Acts and proceedings of the Central Board or its Executive Committee or the State Board not to be invalidated on certain grounds**

No act done or proceeding taken by the Central Board or the Executive Committee constituted under section 5AA or the State Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Central Board or the Executive Committee or the State Board, as the case may be.]

²**5E. Delegation**

³[The Central Board may delegate to the Executive Committee or to the Chairman of the Board or to any of its officers and a State Board may delegate to its Chairman or to any of its officers], subject to such conditions and limitations, if any, as it may specify, such of its powers and functions under this Act as it may deem necessary for the efficient administration of the Scheme, the ⁴[Pension] Scheme and the Insurance Scheme.]

6. Contributions and matters which may be provided for in the Scheme

⁵[xxx] The contribution which shall be paid by the employer to the Fund shall be ⁶[ten per cent] of the basic wages, ⁷[dearness allowance and retaining allowance (if any)], for the time being payable to each of the employees ²[(whether employed by him directly or by or through a contractor)] and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, ⁸[if any employee so desires be an amount not exceeding ⁶[ten per cent] of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section] :

³[PROVIDED that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words ⁶[ten per cent], at both the places where they occur, the words ⁹[twelve per cent] shall be substituted] :

1 Inserted by Amendment Act 33 of 1988, w.e.f. 1-8-1988.

2 Inserted by Amendment Act 28 of 1963, w.e.f. 30-11-1963.

3 Substituted by Amendment Act 33 of 1988, w.e.f. 1-8-1988.

4 Substituted for "Family Pension" by Act 25 of 1996, w.r.e.f. 16-11-1995.

5 Figures and brackets "(1)" omitted by Amendment Act 28 of 1963, w.e.f. 30-11-1963.

6 Substituted for "8 & 1/3%" by Amendment Act 10 of 1998, dt. 23-6-1998, w.e.f. 22-9-1997.

7 Substituted for "and the dearness allowance" by Amendment Act 46 of 1960, w.e.f. 31-12-1960.

8 Substituted for "if any employee so desires and if the Scheme makes provision therefor, be an amount not exceeding eight and one-third per cent of his basic wages, dearness allowance and retaining allowance if any" by Amendment Act 33 of 1988, w.e.f. 1-8-1988.

9 Substituted for "ten per cent" by Act 10 of 1998, w.r.e.f. 22-9-1997.

¹[PROVIDED FURTHER that] where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

Explanation ²[1] : For the purposes of this ³[section], dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

⁴[*Explanation 2* : For the purposes of this ³[section], “retaining allowance” means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.]

⁵[xxx]

COMMENTS

Under section 6 of the Act, obligation of the employer to make contribution under the scheme is not only on the basic wages, but dearness allowance and retaining allowance. Since the dearness allowance also includes the cash value of any food concession allowed to any employee as per Explanation (1) to section 6 of the EPF Act.—*Regional Provident Fund Commissioner, Tamil Nadu v. Wipro Limited 2009 (122) FLR 1036 (Madras H.C.)*

Object—Section 6 casts a liability on the employer to pay to the fund the employer’s contribution at the rate prescribed therein and the employees’ contribution at the same rate or higher, if the employee so desires. As contemplated in section 6, the rate is to be calculated on the basic wages, dearness allowance and retaining allowance—*RPFC (II), West Bengal v. Vivekananda Vidya Mandir 2005 (104) FLR 1042 (Cal. HC)*

In *Shri Mahila Griha Udyog Lijjat Papad v. Union of India 2000 (84) FLR 155 (SC)*, demand for contribution by employer from 1986 to 1991 by way of monthly deductions was sought. The Supreme Court observed that if the past demands are revived, it would bring extreme disaster, not only to the appellant concerned, but also to the poor women employees, who were to be financially assisted by giving them economic assistance when work was taken from them. Therefore, the court while holding that, the Act applied to the appellant’s branch directed that the application of the Act to that branch should be with effect from 1-4-1999. It is obvious that the appropriate deductions under s. 6 of the Act from the wages of the employees concerned at Jabalpur branch as well as the matching contribution of the employer for depositing them with the authority will start from 1-5-1999 for the month of April, 1999 onwards.

Sec. 6 provides for levy of contributions and other matters to be provided for in the schemes. In pursuance of this section, the Employees’ Provident Fund Scheme, 1952 has been framed para 30 whereof cast a duty on the employer to whom the Act applies to pay both his and the employees’ shares of contribution irrespective of whether a demand has been raised against him or not and whether the employees have or have not paid their shares. Payment of contribution is mandatory and the Act provides for no exception under which a specified employer can avoid this mandatory liability. The moment the scheme is put into operation, the liability of the employer to make the requisite contributions springs into being, and it is the notification extending the provisions of the scheme to his establishment per se that attracts the liability and not the service of notice on him to this effect.—*Kumar Bros. (P) Ltd. v. RPFC (1968) Lab IC 1578 (Pat), Bajrangal Parida v. State of Orissa (1975) Lab IC 830 (Ori)*. ‘Contravention’ and ‘default’ are to be read in context in which it is used by the legislature. Under section 6 and section 5, the contribution is to be paid according to the scheme. Paragraph 30 read with paragraph 38 of the scheme provides for mode, manner, method and time for contribution payment—*Smt. Ginia Devi Agarwalla v. The Provident Fund*

1 Substituted for “provided that” by Amendment Act 48 of 1962, w.e.f. 1-1-1963.

2 Existing explanation re-numbered as Explanation (1) by Amendment Act 46 of 1960, w.e.f. 31-12-1960.

3 Substituted for the words “sub-section” by Amendment Act 28 of 1963, w.e.f. 30-11-1963.

4 Inserted by Amendment Act 46 of 1960, w.e.f. 31-12-1960.

5 Sub-sections (2) and (3) omitted by Act 28 of 1963, w.e.f. 30-11-1963.

Inspector and Others, 2002 (93) FLR 1214 (Cal. HC). The offence of non-payment of contributions is a continuing one, and hence the limitation under s. 468 of the Cr.PC is not attracted thereto. The offence is governed by s. 472 of the Code under which fresh period of limitation commences at every moment of the time during which the offence continues.—*Bhagirath Kanoria v. State of MP AIR 1984 SC 1688*.

The amount of contributions will have to be calculated on the basis of basic wages, dearness allowances and retaining allowance, if any, for the time being payable to each of the employees. The amount of encashment of leave will not fall either under dearness allowance or retaining allowance. The amount is definitely payable to each of the employees, subject to his satisfying the requirements that he is so entitled encashment of leave. In view of the definition of “basic wages”, if an employee who has earned leave goes on leave, his salary or wages can obviously fall within the term “basic wages”. There is no good ground to hold that in the event of his not availing the leave but encashing it, the amount which he gets in such encashment should be excluded from the basic wages within the definition of “basic wages” as given in s. 2(b) of the Act.—*Hindustan Lever Employees’ Union v. RPFC 1995 (71) FLR 46 (Bom)*

In *Gyan Bharati v. RPFC (1996) 2 CLR 734 (Cal)*, the staff of the petitioner management school getting basic salary and dearness allowance were deprived of provident fund contribution or dearness allowance from the part of the management. The Calcutta High Court held that the management being employer of the staff and dearness allowance being part of their salary, the statutory liability for contribution towards provident fund cannot be avoided by the employer.

¹[6A. Employees’ Pension Scheme

(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees’ Pension Scheme for the purpose of providing for :

- (a) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and
- (b) widow or widower’s pension, children pension or orphan pension payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme:

- (a) such sums from the employer’s contribution under section 6, not exceeding eight and one-third per cent of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;
- (b) such sums as are payable by the employers of exempted establishments under sub-section (6) of section 17;
- (c) the net assets of the Employees’ Family Pension Fund as on the date of the establishment of the Pension Fund;
- (d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries

¹ Substituted for existing sections 6A and 6B by Act 25 of 1996, w.r.e.f. 16-11-1995, introducing the Employees’ Pension Scheme replacing the Employees’ Family Pension Scheme.

under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

(7) A Pension Scheme, framed under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme.]

COMMENTS

Section 6A(1) postulates framing of Employees' Pension Scheme for the purpose of providing superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies and widow or widowers' pension, children pension or orphan pension payable to the beneficiaries of such employees.—*Maharashtra State Co-operative Bank Ltd. v. Assistant Provident Fund Commissioner 2009 (123) FLR 653 (SC)*

Section 6A(2) lays down that notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the pension scheme, a pension fund to which a specified sum should be paid from the employers' contribution under section 6.—*Maharashtra State Co-operative Bank Ltd. v. Assistant Provident Fund Commissioner 2009 (123) FLR 653 (SC)*

The validity of Employees' Pension Scheme, 1995, was challenged. Hon'ble Supreme Court held that government framed schemes are reasonable and no excessive delegation or lack of proper statutory guidelines were there. The golden scales should not be weighed by the court nor the view of courts should be imposed as the Employees' Pension Scheme, 1995 is for employees' welfare and does not violate the provisions of the Constitution. The Scheme was held to be valid—*OTIS Elevator Employees' Union S. Reg. and others v. Union of India and Others, 2003 (99) FLR 1179 (SC)*.

This Act is concerned with framing of appropriate schemes and the government has the power to do so. The government framed Scheme will not be examined by the Supreme Court as if it is an appeal, but if the return which the employees' families obtained is such that the employees' contribution is high and return is negligible, then it can be held to be an arbitrary scheme. The pension scheme is for the welfare of employees and it is not violative of the provisions of the Constitution. Each and every employee must get back what he had contributed alongwith government's contribution to it. The scheme does not provide for exorbitant contribution with negligible returns.

The employer controlled the contributory Superannuation Benefit Fund Scheme to which he too contributed token amount. It was held that employer has the power for administrative convenience but had no control on the fund. Scheme was not floated jointly but by employees. There was a new scheme and employees retired prior to the mentioned cut off date. It was held