Employees Provident
Fund Organization

'अद्यतन'

Adyatan (Legal Bulletin)

‘अद्यतन’‘Adyatan’

Monthly Legal Bulletin of EPFO

[Sept 2023-Oct 2024]

Editorial Board

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Abbreviations

AIR	All India Reporter
CoC	Committee of Creditors
CIRP	Corporate Insolvency Resolution Process
Cr. P.C	Criminal Procedure Code, 1973
EPF Act	The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
I & B Code	Insolvency and Bankruptcy Code, 2016
I.P.C	Indian Penal Code
LLJ	Labour Law Journal
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate Tribunal
RP	Resolution Professional
RPFC	Regional Provident Fund Commissioner
SC	Supreme Court
SCC	Supreme Court Cases
SCC (L&S)	Supreme Court Cases (Labour & Services)
SCR	Supreme Court Reports
SCJ	Supreme Court Journal
SICA	Sick Industrial Companies (Special Provisions) Act, 1985
SLP	Special Leave Petition

INTRODUCTION

ADYATAN – EPFO's Monthly Legal Bulletin – was initiated in September 2023 as a dedicated platform for sharing legal updates and insights pertaining to the Employees' Provident Fund Organisation (EPFO). This bulletin serves as a knowledge-sharing resource, aimed at keeping legal practitioners, officials, and stakeholders informed of the latest legal developments, key judgments, and policy decisions that impact EPFO's legal landscape.

The primary objective of '*ADYATAN'* is to enhance legal awareness within the organisation by presenting a curated collection of cases, news, and analyses relevant to EPFO's functioning. Each issue highlights critical judicial pronouncements, amendments in legislation, and emerging trends in labour laws, ensuring that EPFO's legal fraternity remains well-versed with contemporary issues.

This **compendium** brings together the all issues of *ADYATAN* issued till date into one comprehensive document, offering a retrospective view of key legal matters addressed in recent months. It reflects EPFO's commitment to transparency, legal excellence, and the dissemination of accurate information.

The information provided in the *ADYATAN* compendium is for informational purposes only and is general in nature. It does not constitute legal advice and should not be relied upon as such. The contents of this bulletin are not intended to create any attorney-client relationship or legal obligations.

For any legal matters, readers are advised to refer to the original judgments and legal texts. EPFO disclaims any liability for actions taken or not taken based on the information provided herein. The EPFO is not responsible or liable in any way for the accuracy, completeness, or legality of the information in this bulletin.

We hope that this compendium will serve as a valuable reference for all those engaged in EPFO's legal processes, helping them navigate the complexities of the laws that govern the organisation.

APPLICABILITY & COMPLIANCE

The Officer In-charge, Sub-Regional Provident Fund Office and Ors. vs. Godavari Garments Limited (24.07.2019 - SC) AIR2019SC3528

(Definition of "employee" under Section2(f) is an inclusive definition)

NILENDU MISHRA,
RPFC-I PDNASS, EPFO

Brief Facts: EPF covered Respondent Company- a subsidiary a State Govt. undertaking, engaged women workers and provided them material for making garments at their own homes with their personal sewing machines.

Appellant EPFO Office issued Order to the Respondent Company for EPF payment to the women workers.

Appellant No. 1 through its order U/s 7A of the EPF & MP Act held that the women workers engaged were covered by the definition of "employee" under Section 2(f). The Respondent Company contended that the said women workers were not their employees, and hence not covered by Section 2(f) of the EPF Act. Bombay High Court set aside the 7A Order upon appeal and held that, the Respondent Company had no direct or indirect. control over the women workers.

Relevant Extracts:

The definition of "employee" under Section 2(f) of the EPF Act is an inclusive definition, and is widely worded to include any person engaged either directly or indirectly in connection with the work of an establishment. The employed women workers were provided all the raw materials as per the specifications by the Respondent. It had the absolute right to reject the finished product i.e. the garments, in case of any defects. Merely Work at off-site/home would not take away their status as employees.

The judgments make it abundantly clear that the women workers employed by the Respondent Company are covered by the definition of "employee" under Section. 2(f) of the EPF Act. The EPF Act is a beneficial social welfare. legislation which was enacted by the Legislature for the benefit of the workmen.

The women workers were certainly employed for wages in connection with the work of the Respondent Company and thus, directly engaged by the Management. The definition of "employee" under Section 2(f) is an inclusive definition, and includes workers who are engaged either directly or indirectly in connection with the work of the establishment, and are paid wages (Ratio Decidendi).

Judgment passed by the Bombay High Court being contrary to settled law, is set aside. The Order passed by the Appellant No. 1 is restored. The Respondent Company is directed to deposit the amount assessed by Appellant No. 1 towards Provident Fund dues of the women workers. within 1 month from the date of this Judgment. The Civil Appeal is allowed.

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SC distinguishes ‘Basic Wage’ from ‘Minimum Wage’ APFC Vs G4S Security Ltd. Civil appeal no. 9284 of 2013 before the Supreme Court

C RAMESH,
SECTION SUPERVISOR EPFO VELLORE

The Supreme Court bench consisting of Justice Hima Kohli and Rajesh Bindal held that as the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 had already outlined the term 'basic wage,' there existed no requirement to construe it differently using the Minimum Wages Act, 1948. The Supreme Court concurred with the High Court's perspective that 'basic wage' should not be conflated with the 'minimum wage' delineated in the Minimum Wages Act. Let's take a brief look at the case's factual background.

M/s G4S Security Services (India) Limited was allegedly engaging in a stratagem wherein the pay structure of its employees was reportedly manipulated to ostensibly reduce its obligations under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. The Assistant Provident Fund Commissioner issued a notice contending that the employer mentioned above incorrectly computed the provident fund contributions by unjustifiably excluding some portions from the ‘basic wages. ’He directed that contributions should be computed under Section 6 of the EPF & MP Act, referencing the ‘Basic wage,’ Dearness allowance, and Retaining Allowance and that the ‘basic wages’ could not fall below the ‘minimum wages’ specified by the Payment of Minimum Wages Act, 1948.

Upon appeal by the employer, the EPF Tribunal, in its ruling dated 15-06-2009, reversed the Assistant Provident Fund Commissioner’s standpoint. The Tribunal held that the wages disbursed by the appellant to its employees adhered to the Minimum Wages Act, and the company’s remuneration system was legally sound. Consequently, the Tribunal decreed that the appellant was liable to make provident fund contributions based on permissible ‘basic wages’ and other allowances within the scope of the EPF Act rather than being tied to the entirety of the minimum wages disbursed to employees. It was emphasized that specific components like House Rent Allowance, forming part of the appellant’s wage structure, did not qualify as ‘basic wage’ according to section 2(b) of the EPF & MP Act, 1952

In Civil Writ Petition No.15443 of 2009, the High Court of Punjab & Haryana, in its order dated 01-02-2011, expounded that the definition of ‘wage’ contained an accompanying exclusion clause encompassing various allowances like House Rent Allowance. Conversely, the Minimum Wages Act established a distinct wage definition, encompassing House Rent Allowance but excluding specific allowances from its purview. Despite the shared objective of employee welfare, the purposes behind both statutes remained manifestly separate. Principles of statutory interpretation dictate that statutes be construed based on language and the legislative intent. Relying on these principles, the High Court upheld the EPF Tribunal’s decision.

In Latter Patent Appeal 1139 of 2011, filed by the Assistant Provident Fund Commissioner against the Ld. Single Judge’s ruling, the Division Bench of the High Court of Punjab & Haryana, in its order dated 20-07-2011,reasoned that the statute’s definition of ‘basic wage did not necessitate equating ‘basic wage’ with the ‘minimum wages’ specified in the Minimum Wages Act, 1948. While it was evident that wages below the minimum wage were unlawful, this did not imply that EPF Act calculations must align with the Minimum Wages Act. The employer could adhere to statutory provisions within the EPF Act for contribution computation based on the defined ‘basic wage.’ Consequently, the appeal was dismissed.

The Hon’ble Supreme Court ordered as under:

> “4. In our opinion, once the EPF Act contains a specific provision defining the words ‘basic wage’ (under Section2b), then there was no occasion for the appellant to expect the Court to have travelled to the Minimum Wages Act, 1948,to give it a different connotation or an expansive one, as sought to be urged. Clearly, that was not the intention of the legislature.

5. It is also pertinent to note that a similar issue had come up for consideration in the order dated 23rd May, 2002, passed by the APFC under Section 7A of the EPF Act, that was duly accepted by the appellant department as the said order was not taken in appeal.

6. In view of the aforesaid observations, the present appeal is dismissed as meritless. There shall be no orders as to costs."

The essence of the ruling is that employers can fulfill their obligations under the Minimum Wages Act by aligning with its definition of 'minimum wages'. Moreover, it's not obligatory for 'basic wages' under the EPF Act to align directly with the Minimum Wages, as these terms encompass distinct allowances in varying manners.

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Pawan Hans Limited and Ors. vs. Aviation Karmachari Sanghatana and Ors. (17.01.2020 - SC) 2020/INSC/51

(Directly employed Contractual Workers in Government Company eligible for benefits under the EPF)

KUNAL THAKUR.
RPFC-II PDNASS, EPFO

Brief Facts: Appellant-Pawan Hans Company (incorporated in the year 1985) instituted Pawan Hans Employees Provident Fund Trust (PF Trust) in the year 1987 wherein management started depositing its share towards provident fund contribution with respect to some 570 regular employees out of total 840 employees.

Amendments were made to the EPF Scheme framed Under Section 5 of the EPF Act. Clause 3 (b)(ci) was inserted vide Notification No. S35016/1/1997-SS II dated 22.07.2002, by which EPF Scheme was made applicable to aircraft or airlines establishments other than the aircraft or airlines establishments owned or controlled by the Central or State Government.

Members of Respondent-Union (directly engaged contractual employees) made several representations in the year 2012-14 to extend benefit of PF Trust Regulations. The Company failed to respond to representations.

Being aggrieved by inaction of Company, Respondent-Trade Union filed writ petition before High Court. The High Court allowed Writ Petition with direction that benefits under EPF Act be extended to members of Respondent-Trade Union and other similarly situated employees. The Appellant Company claimed that being a Government Company it is exempted from the purview of the EPF & MP Act, 1952 under Section 16 (10(b) of the Act.

Issue in question: Whether contractual employees of Appellant Company were entitled to provident fund benefits under PF Trust or under Employees' Provident Funds and Miscellaneous Provisions Act, 1952? If so, from which date?

Relevant extracts: The court stated that as per Section 2(f) of the EPF Act, the definition of an employee is an inclusive definition, and is widely worded to include any person engaged either directly or indirectly in connection with the work of an establishment, and is paid wages.

It referred to the twin test for an establishment to seek exemption from the provisions of the EPF Act, 1952 as laid down in Regional Provident Fund Commissioner v. Sanatan Dharam Girls Secondary School (30.10.2006) AIR 2007 SC 276: First, the establishment must be either "belonging to" or "under the control of" the Central or the State Government. The phrase "belonging to" would signify "ownership" of the Government, whereas the phrase "under the control of" would imply superintendence, management or authority to direct, restrict or regulate.

Second, The employees of such an establishment should be 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 governing such benefits.

Applying the test, the court observed that the hold that the Company has failed to make out a case of exclusion from the applicability of the provisions of the EPF Act.

It was held that members of the Respondent-Union are covered by the EPF Act. The work being of a perennial and continuous nature, the employment could not be termed to be contractual in nature. The members of the Respondent Union and all other similarly situated contractual employees, are entitled to the benefit of provident fund under the PF Trust Regulations or the EPF Act. It will ensure uniformity in the service conditions of all the employees of the Company.

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"The Question of Legality and Validity of Prosecution Sanction has to be Raised in the Course of Trial "

Provident Fund Inspector Vs. M/s AIMIL Pharmaceuticals (I) Ltd. &Ors. Etc. Criminal Appeal Nos. of 2022 (@ Special Leave Petition (Crl) Nos.3737-3748 of 2019)

MANISH KUMAR THAKUR
RPFC-II, EPFO HEAD OFFICE

Background Aimil Pharmaceuticals Ltd (hereinafter "the Establishment") is an establishment covered under Employees" Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter "the Act"), and falls under the jurisdiction of EPFO Delhi North. The Establishment was in default for having failed to pay the statutory dues under the Act and the Schemes framed there under, assessed during the years 2011-2012

On 15.05.2012, sanction for the prosecution of the establishment was granted by the concerned Regional PF Commissioner -II (RPFC-II), Delhi North in exercise of powers conferred upon him by Section 14AC(1) of the EPF & MP Act, 1952.

On 19.05.2012, on the strength of the sanction granted by the RPFC-II, Delhi North, the Department filed 12 criminal Complaints against the establishment, and the same were registered as Criminal Complaint No 559/1/2012 to 570//1/2012, seeking prosecution of the petitioners for offences committed under Para 7 & 8 of the Employees Deposit Linked Insurance Scheme,1976 read with section 6C and 14(1B) of the EPF & MP Act, 1952 Accordingly, the Metropolitan Magistrate took cognizance of the same and issued process against the petitioners.

In the aforementioned factual back ground, the Petitioner approached the Hon'ble Delhi High Court under section 482 of the Cr. PC seeking quashing of the proceedings in the criminal complaints case pending before the court of MM-03 North West District Rohini Delhi.

Delhi High Court Order By the impugned common judgment and order dated 12.07.2018, the High Court of Delhi in exercise of powers under Section 482 Cr.PC has quashed the criminal proceedings for the aforesaid offences inter alia on the grounds that (1) the officer, who granted sanction to lodge the prosecution has no authority and (2) that the complaint was premature.

The High Court held that the notification dated 17.10.1973 issued in exercise of power under Section 14AC of the Act can be construed as delegating the power to sanction prosecution vested in the Central Provident Fund Commissioner only unto the Regional Provident Fund Commissioner, in-charge of the regional office and not the Regional Provident Fund Commissioners of the lower grade or rank.

The High Court further held, "valid sanction is sine qua non for a valid order of cognizance. The lack of competence in the authority that accorded sanction in these cases knocks the bottom out of the prosecutions in the twelve cases. This itself is a good ground for this court to interdict under Section 482 Cr.P.C."

The Special Leave Petition The Department challenged the above High Court order by way of an SLP.

Question of Law The notification No. 5.O. 549(E) dated 17.10.1973 under section 14A of the FPE & MP Act 1952 is reproduced hereunder

"..The powers vested in the Central Provident Commissioner under the provisions of the aforesaid sanction shall also be exercisable within each of the regions specified in the Schedule by the respective Regional PF Commissioners in whose region the establishment is covered or has its Head Office"

The following questions of the law were raised before the Supreme Court:

A. Whether or not the Hon'ble High Court was justified in holding that the Notification dated 17.10.1973 only authorizes the RPFC-I to grant prosecution sanction?

B. Whether or not the aforesaid Notification only authorizes the RPFC, in-charge of the region to grant prosecution sanction under Section 14AC of EPF Act?

C. Whether or not the words 'Regional Provident Fund Commissioners' mentioned in plural in the Notification includes both the RPFC-1 and RPFC-II?

Stand of the Department- The Department took the following stand

The Act and Schemes framed there under do not distinguish the post of RPFC as RPFC-I and RPFC-II.

The aforesaid notification dated 17.10.1973 nowhere uses the words "in-charge of the regional office" and instead uses the words in plural that "Regional Provident Fund Commissioners in whose region the establishment is covered or has its Head Office.

The division of post of RPFC in Grade-I and Grade-II has been done only for administrative convenience and no such distinction exist for the purpose of implementation of the provisions of the EPF Act and Schemes framed there under. The powers conferred on RPFC under various provisions of the Act is exercisable by both the RPFC-I and RPFC-II.

The words in plural 'Regional Provident Fund Commissioners' used in the Notification dated 19.10.1973 unambiguously means and covered both the RPFC-1 and RPFC-II and authorize both of them to grant prosecution sanction under Section 14AC of the EPF Act. The prosecution sanction given by the RPFC II was, therefore, valid.

Supreme Court Judgement The Hon'ble Supreme Court quashed and set aside the Delhi High Court Judgement dated 12.07.2018.

The Supreme Court held, "There is distinction between the absence of sanction and the defective sanction. The question of absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. The question of legality and validity of sanction has to be raised in the course of trial It is observed and held that invalidity of sanction where sanction order exits, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorized or competent to grant such sanction. It is observed that the above grounds of invalidity or illegality of sanction can always be raised in the course of trial." The Supreme Court held, "In view of the above and for the reasons stated hereinabove, the High Court has committed a serious error in quashing and setting aside the criminal proceedings on the aforesaid grounds in exercise of powers under Section 482 Cr.PC. The impugned common judgment and order passed by the High Court quashing and setting aside the criminal proceedings on the aforesaid grounds, namely, (1) that the officer who granted sanction to lodge the prosecution has no authority and (2) that the complaint was pre-mature, is unsustainable and the same deserves to be quashed and set aside."

The Supreme Court in its judgement has relied on its own previous two judgements:

Dinesh Kumar Vs. Chairman, Airport Authority of India and Another (2012) 1 SCC 532 Central Bureau of Investigation and Others Vs. Pramila Virendra Kumar Agarwal and Another (2020) 17 SCC 664

Conclusion- The Supreme Court has decided that the question of legality and validity of prosecution sanction are to be raised during trial. The same is a matter of trial to be adjudicated on the basis of evidence on record. The Supreme Court has not adjudicated on the validity of the sanction. Instead, it has held that the extraordinary jurisdiction conferred upon High Courts under sec. 482 CrPC cannot be invoked to quash proceedings on the ground of invalidity of sanction. The issue whether RPFC II is competent to grant sanction has not been judicially examined by Supreme Court. The same may arise again depending upon the judgement of and the view taken thereon by the trial court.

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"Compliance of Contractors' employees by the principal employer"

Himanshu Kumar,
Regional P.F. Commissioner-I
Regional Office Tambaram

As per the Employees Provident Fund & Miscellaneous Provisions Act, 1952, the definition of Section 2(f), reads as—

> *"2(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 an establishment, and who gets his wages directly or indirectly from the employer, and includes any person—*
> *(i) employed by or through a contractor in or in connection with the work of the establishment;*
>
> *(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;"*

The employees of an establishment consist of all types of employees including engaged direction or indirectly or through the contractor.

In this regard, the Hon'ble High Court of Madras has passed a landmark judgment dated 12.10.2023 in WP No.28738, 28742, 28747, 28748 & 28848 of 2023, in the matter of The Commissioner, Tambaram Corporation, Chennai 600045 versus the RPFC-I, EPFO, Regional Office, Tambaram. The Hon'ble High Court has discussed the provisions of Section 2(f) of the EPF & MP Act, 1952 and Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 which reads as—

> **"*21.Responsibility for payment of wages.***
>
> *(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.*
> *(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.*
> *(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.*
> *(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be,*
> *to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.?*
>
> *That apart, Rules 25(2)(iv), 71, 72 and 73 of the Tamil Nadu Contract Labour Rules, 1975, provides as follows:-*
> *25. ....*
> *(2) Every licence granted under sub-rule (1) or renewed under rule 29 shall be subject to the following conditions, namely:-*
> *....*
> *(iv) the rates of wages payable to the workmen by the contractor shall not be less than the rates prescribed under the Minimum Wages Act, 1948 (11 of 1948), for such employment where applicable and where the rates have been fixed by agreement, settlement or award, not less than the rates so fixed;*
> *....*

71. A notice showing the wage period and the place and time of disbursement of wages shall be displayed at the place of work and a copy sent by the contractor to the principal employer under acknowledgment.

72. The principal employer shall ensure the presence of his authorised representative at the place and time of disbursement of wages by the contractor to workmen and it shall be the duty of the contractor to ensure the disbursement of wages in the presence of such authorised representative.
73. The authorised representative of the principal employer shall record under his signature a certificate at the end of the entries in the Register of Wages or the 1[Register of Wages-cum Muster Roll] as the case may be, in the following form:-
Certified that the amount shown in column No. ... has been paid to the workman concerned in my presence on ..... at ...."

In this case the Hon'ble High Court while pronouncing the order has stated that –

> *"the Writ Petitioner, should have verified that the contract labourers engaged through contractors are paid the eligible amount of wages and payment of Provident Fund Contribution on time and they cannot direct the respondent to proceed against the contractors who had engaged all the workers. The contention of the learned counsel for the writ petitioner that the respondent ought to have proceeded against the contractors and not against the present writ petitioners cannot be accepted for the simple reason that Section 2F of the Act includes any person employed by or through a contractor in or in connection with the work of the establishment and in the instant case all the workers come within the definition of Section 2F of the Act and the petitioner being the principal employer should pay the Provident Fund due to the employees. Moreover the employees were engaged through contractors for activities relevant and linked with Municipalities/Corporations. The Writ Petitioners had failed to make*
> *contribution as per Section 6 of the Act and they failed to fulfill the responsibilities as per Section 8A of the Act and the provisions of the*
> *scheme framed there under."*

In this regard, the Hon'ble High Court, has not found any ambiguity in the order of the Regional Provident Fund Commissioner-II, EPFO, Tambaram and has dismissed the present case.

In this regard, further the provisions of Section 6 which reads as—

***"6. Contributions and matters which may be provided for in Schemes**— The contribution which shall be paid by the employer to the Fund shall be ten per cent. of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (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, if any employee so desires, be an amount exceeding 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:*
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 ten per cent., at both the places where they occur, the words twelve per cent shall be substituted:
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 1.—For the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation 2.—For the purposes of this 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."

It is amply explicit that the establishment has to pay the contribution not only to the directly engaged employees but also in respect of contract employees.

Further as per Section 8A of the EPF & MP Act, 1952—

***"8A. Recovery of moneys by employers and contractors**.—(1) The amount of contribution (that is to say the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme), and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor, under any contract or as a debt payable by the contractor.*
(2) A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee the employee's contribution under any Scheme by deduction from the basic wages, dearness allowance and retaining allowance (if any) payable to such employee.
(3) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the basic wages, dearness allowance, and retaining allowance (if any) payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.
Explanation. —In this section, the expressions, "dearness allowance" and "retaining allowance" shall have the same meanings as in section 6."

It is also clear that no payment should be released by the principal employer to the contractor without ascertaining the compliance made by the contractor under the EPF & MP Act, 1952 in respect of employees engaged by him.

As per para 30 of the EPF Scheme, 1952, which reads as—

"30. Payment of contributions
(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).
(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.
(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.
Explanation: For the purposes of this paragraph the expression "administrative charges" means 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, and in respect of which Provident Fund Contribution are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix."

The EPF & MP Act, 1952 and the Schemes framed thereunder, has not mentioned about the allotment of code number for compliance under the Act and the Schemes, which is merely for the purpose to create identification of the establishment for accounting the contributions and give unique identity to the concerned establishment.

Hence there is no locus standi for the principal employer to deny compliance in respect of the contractor's employees on the ground that EPF Code Number has been allotted to the Contractor establishment as whether the EPF Code number is allotted or otherwise, it is the responsibility of the principal employer towards the compliance of EPF & MP Act, 1952 and the Schemes in respect of all the employees engaged by him directly or indirectly or through the contractor, which is reflected in the above judgement of the Hon'ble High Court of Madras.

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W.P.(C) 7729/1999, M/S WHIRLPOOL OF INDIA LTD vs REGIONAL PROVIDENT FUND COMMISSIONER BEFORE DELHI HIGH COURT, Date of Order 6.7.23

Manish Kumar Thakur,
Regional P.F. Commissioner-II
Headquarters

The questions for consideration before the High Court in the present matter were-

(i) Whether canteen allowance paid to all the employees is a "cash value of any food concession" under Section 6 of the E.P.F. Act ("the Act"); and
(ii) Whether the canteen allowance which is paid in cash to all the employees is "basic wages" for the purposes of Section 2 (b) of the Act.

Facts- Through a settlement dated 13.10.1995 under the Industrial Dispute Act, the Petitioner Company extended several benefits to its employees, one of which was canteen allowance of Rs 300/- per month. The Petitioner discontinued the subsidized canteen facility and started paying this canteen allowance.

Based on the Enforcement Officer's Report, an amount Rs.63,83,794/ was determined by the Assessing Officer under Section 7A of the EPF & MP Act 1952 ("the Act") vide order dated 28.07.1999 by holding that canteen allowance is in the nature of "cash value of food concession" and shall be liable for PF deduction under Section 6 of the Act.

The Petitioner went in appeal before the EPF Appellate Tribunal ("the Tribunal").

Contention of petitioner before the Tribunal -

Under the terminology „cash value of food concession", one is required to determine the cash value of any food which is given to the employees. However, in the present matter, the Petitioner is not supplying any food item to the employees but only cash allowance is given to employees as an additional facility as per the terms of agreement

EPFAT vide Order dated 17.12.99 upheld the 7A Order by holding that-

"The appellant factory admittedly is required under the factory rules to provide canteen facility to its employees. Now the employees have to purchase food from canteen at full price and in lieu of this they are getting Rs. 300/- per month from the appellant. Thus Rs. 300/- per month being paid by the appellant to his employees is nothing but cash value of food concession."

The Tribunal Order was challenged by the Petitioner Company through a Writ before the High Court of Delhi.

Petitioner argument before the High Court was thus-

- Canteen allowance is not covered by the definition of the "basic wage" under Section 2(b) of the E.P.F. Act.
- Explanation-I to Section 6 of the E.P.F. Act intends to include only "cash value" of food concession under its ambit for the purpose of computing the provident fund contribution, and not the "cash payment" as is made to the workmen in the present case.
- Canteen allowance is merely a "cash allowance" paid to their employees and cannot be in any case termed as "cash value of food concession" as no food item at concessional rate has been supplied by the Petitioner to its employees
- This canteen allowance is not being paid to all the employees but is limited to only those employees who qualify as "workman" under Section 2(e) of the I.D. Act

Department's Argument-

- The Petitioner strategically transformed the previously given subsidized canteen facility into the canteen allowance, so as to escape its liability under the E.P.F. Act
- Canteen allowance forms part of the „basic wages‟
- The Petitioner is paying Rs.300/- per month as canteen allowance to all its employees covered under the I.D. Act. The earlier provided food concession has taken color of fixed cash value in the form of „canteen allowance‟ which is payable to all eligible employees, and hence satisfies the test laid by the Apex Court in Bridge & Roofs Co. Ltd. Case

The analysis and conclusion of the Court -

Whether canteen allowance paid to all the employees is a "cash value of any food concession" under Section 6 of the Act?

The Court,in view of the law laid down by various High Courts, held that the canteen allowance paid by the Petitioner to its employees in lieu of canteen facilities cannot be treated as "cash value of any food concession" because the expression "cash value of any food concession" pre-supposes the grant of food concession of which the cash value is determined. This is not the case in matter under examination.

Whether the canteen allowance which is paid in cash to all the employees is "basic wages‟ for the purposes of Section 2 (b) of the Act?

The Court held that a reading of the Bridge n Roof Judgement, makes it clear that the emoluments like canteen allowance which are available to all the employees can be treated as part of "basic wages". Canteen allowance is not a benefit extended to individual employee; it is available to all the employees covered under Section 2 (e) of the I.D. Act

Further, relying on The Hon‟ble Gujarat High Court in *Gujarat Gypromet*, Delhi HC held that unless the payment falls in any one of the specifically mentioned excepted categories in the definition of basic wages under Section 2(b) of the Act, every emolument which is earned by the employee while on duty or on leave or on holidays in accordance with the terms of the contract of employment and which are paid or payable in cash to him must be included within basic wages.

The Court, therefore, concluded that canteen allowance has to be treated as an emolument which is part of basic wages of an employee under Section 2(b) of the Act and therefore, the Petitioner needs to deposit Provident Fund on the said amount.

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Mathoshri College Judgement– 'Clubbing of establishment for EPF Coverage'

Sh. Sameer Kumar,
Regional P.F. Commissioner-II
Regional Office Delhi West

The EPF Act mandates extension of Social Security to all the workers employed in establishments having 20 or more workers. While the Benign legislation intends to ensure a secure life to the workers, the history stands witness to certain attempts to foil the noble intent of the Act.

In its order dated 12.10.2013 in the case of M/s MATHOSRI MANIKBAI KOTHARI COLLEGE OF VISUAL ARTS … Appellant(s) vs THE ASSISTANT PROVIDENT FUND COMMISSIONER the Hon'ble Supreme court continued its streak of preventing the corporate veil from thwarting the Social Security Rights of the Employees.

The order of the Supreme Court upheld the order of the Karnataka High Court and delves deeper into the fundamental factors that necessitates clubbing of two establishments for the purpose of coverage of an establishment under EPFO.

Brief Facts of the case

In the instant case an educational society - Ideal Fine Arts Society, runs two institutions, namely, the 'Ideal Institute of Fine Arts' and 'Mathosri Manikbai Kothari College of Visual Arts'. Both, the Ideal Institute as well as the Arts College are being run in the same campus.

The Ideal Institute was set up in the year 1965, offering Diploma Course in drawing and painting, whereas the Arts College was set up in the year 1985-86, offering Graduate and Post- Graduate Degree in drawing and painting. The Area Enforcement Officer conducted an inspection of the establishments and found that the Ideal Institute employed 8 persons, whereas the Arts College had 18 employees. The report further pointed that that there being total 26 employees working in both the Institutes, which are managed by the same Society and within the same premises, the establishment should be clubbed and covered under the EPF Act.

Submissions of the Estabislhment

The Establishment – Mathoshri College contested the stand of the department and submitted that both the Institutes, namely, the Ideal Institute set up in 1965, and the Arts College set up in 1985-86, are independent from each other and are merely managed by the same Society. They further submitted that there is no financial integrity between the two Institutes and both the Institutes are offering different courses, having permission/affiliation from different authorities. The establishment also added that the Ideal Institute is getting 100% grant-in-aid, whereas the Arts College is getting only 70% grant-in-aid from the Government of Karnataka.

Case laws quoted

The Apex Court in this judgement recalled a series of its earlier judgements on the issue of clubbing of establishments for the purpose of determining Coverage under the EPF Act. It referred to its order in the **Associated Cement Co. v. Workmen, 1960**, wherein it opined that it is impossible to lay down any one test as absolute and invariable for all cases to determine the issue of clubbing of two establishments for the purpose of coverage under the EPF Act. The honourable bench noted that in one case, 'unity of ownership, management and control' may be an important test whereas in another case 'functional integrity' or 'general unity' or 'unity of employment' may be important.

The Hon'ble Court however expounded that amongst all these tests the most important appears to be that of "functional integrity" & "unity of finance and employment". Functional integrity, here implies

functional interdependence between the two establishments i.e. one unit cannot exist conveniently and reasonably without the other. Subsequently the question unity of finance and employment can be examined to conclude whether the employer has actually kept the two units distinct or integrated.

The Supreme Court also referred to its judgement in the **RPFC v. Naraini Udyog, (1996)**, wherein it established functional integrity between two establishments located three kilometres apart but with common management, controlled by the same Hindu Undivided Family (HUF), having a common head office. In this case it pronounced that mere fact of having separate registration under the Factories Act 1948, Sales Tax Act 1956 and the ESI Act 1948, is non-relevant for holding the establishments as distinct entities for the purpose of coverage under the EPF Act.

Additionally the apex court recalled its judgement in **L.N. Gadodia & Sons's case.** The issue under consideration in this case was clubbing of two companies namely, Delhi Cattle Farming Pvt. Ltd and Delhi Farming and Construction Pvt. Ltd. In this case it was argued by the establishment that both these companies were independently incorporated at different times and there was no connection between their activities or the business. However, it was observed that both the companies had their registered office at the same place, using the same phone number and having some common Directors moreover, there were financial transactions between the two companies.

The Court pronounced that these two companies, despite being separate legal entities, have common management, financial integration and workforce proximity, as such despite being separate entities, both the institutions were effective branches of the same establishment and thus clubbable under the EPF Act.

Judgement

In light of its above Judgements, the Supreme Court scrutinised the submissions of the establishment. In the documents submitted by the College it was noticed that the UGC in 1987 while communicating the inclusion of the College in the list of approved colleges mentioned its name as 'The Ideal Fine Arts Society's College of Visual Art'. Whereas, the certificate of accreditation issued by the National Assessment and Accreditation Council in 2004 mentions the name of the college as 'The Ideal Fine Art Society's Mathosri Manikbai Kothari College of Visual Arts'. These documents documents produced by the establishment themselves show that it is not an independent establishment but an arm of the Society.

It was further noticed that the balance sheet of the Mathoshri college clearly shows deposits from the Society thus establishing financial integrity of the establishment with the Society which is running both the Institutes.

The Apex court in the Judgement in this case pronounced that two Institutes performing from the same premises are managed and controlled by the same management and the mere fact that they offer different courses or were established at different times is not relevant, the fact that one of the institutes receives 100% grant-in-aid from the government while the other is receiving to the extent of 70%, is also not relevant to the case

The court opined that there is financial integrity between the Society and both the institutes run by it as such both are to be clubbed for the purpose of deciding their eligibility to be covered under the EPF Act.

This Case marked another milestone in the series of judgements by the Supreme Court in the evolving landscape of coverability under the EPF Act. It tears down the devious attempts by certain establishments to outwit the law and establishes that Social Security Right being a human right is too significant to be denied by sheer shrewd interpretation of the statute.

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Civil appeal no. 4619 of 2010, Thankamma Baby vs The RPFC Kochi Kerala before Hon'ble Supreme Court of India

Sukhman Singh
ASO(Legal)
EPFO HQ

The case at hand revolves around the interpretation of clause (b) of sub-Section (3) of Section 1 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (the 1952 Act). This legal document outlines the facts, submissions, and considerations made during the appeals process.

II. Background

The appellant, involved in manufacturing, assembling, and selling umbrellas, received a notice from the Regional Provident Fund Commissioner in 1997.

The notice alleged that the 1952 Act was applicable to the appellant, categorizing their business as a 'trading and commercial establishment' based on a government notification.

III. Legal Proceedings

An inquiry was conducted under Section 7A of the 1952 Act, leading to a decision that the appellant's case fell under the 1962 notification.

The appellant filed a Review Petition, which was rejected, and an appeal to the Appellate Authority was dismissed.

A Writ Petition was filed, challenging the decision. The learned Single Judge dismissed the petition, and the Division Bench of the Kerala High Court upheld the decision in a subsequent Writ Appeal.

IV. Submissions by the Parties

Appellant's Arguments:

The appellant's counsel argued that clause (a) of sub-Section (3) applies only to factories engaged in industries specified in Schedule I of the 1952 Act.

Since the appellant's establishment is not a factory engaged in Schedule I industries, it cannot fall under clause (b) of sub-Section (3).

Reference was made to the Regional Provident Fund Commissioner V. Shibn Metal Works case in support of their argument.

Respondent's Arguments:

The respondent's counsel contended that the business of the appellant involved both manufacturing and selling umbrellas, qualifying as a 'trading and commercial establishment' under the 1962 notification.

The concurrent findings of the appellate authority, the Single Judge, and the Division Bench were emphasized.

V. Consideration of Submissions

EPF & MP Act (Section 1 of the 1952 Act):

Section 1 outlines the scope of the 1952 Act, including clause (a) applicable to specified industries in Schedule I, and clause (b) for other establishments notified by the Central Government.

Interpretation and Precedent:

The Constitution Bench's decision in Mohmedalli and others V. Union of India clarified the intent of the 1952 Act as a social justice measure.

The court rejected the appellant's argument that clause (b) excludes factories not covered by Schedule I.

Notification and Commercial Establishment:

The establishment of the appellant was deemed a 'trading and commercial establishment' under the 1962 notification, given its business of assembling and selling umbrellas.

VI. Judgment

The court found no error in the decisions of the lower courts.

The appeals were dismissed, and the appellant was granted three months to fulfill any monetary liability resulting from the orders of the respondent confirmed by the High Court.

VII. Conclusion- The detailed judgment reaffirms the applicability of clause (b) of sub-Section (3) of Section 1 to establishments not covered by clause (a). The court's interpretation aligns with the social welfare objectives of the 1952 Act, emphasizing a purposive approach. The appellant's establishment, engaged in commercial activities, was held to fall under the category specified in the relevant notification.

Himachal Pradesh State Forest Corpn v. Regional Provident Fund Commissioner - (2008) 5 SCC 756

Chandramauli Chakraborty
ACC(HQ) Legal
EPF HQ

1. Proceedings for depositing provident fund under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (the "Act"), for the period from 1982 to 1988 were initiated against Himachal Pradesh State Forest Corporation (Corporation) in December 1988.
2. The question arose whether the persons employed by the contractor were employees of the Corporation, entitled to the benefits of the Act. The corporation disputed its coverage under the Employees' Provident Funds and Miscellaneous Provisions Act (Act) and its liability for the contributions.
3. The Regional Provident Fund Commissioner concluded that these employees were indeed employees of the Corporation. An assessment of the amounts due from the Corporation was also made.
4. The Employees' Provident Fund Appellate Tribunal upheld the corporation's coverage but remanded the case for re-determination of the amount due, considering the long period and potential lack of records.
5. The corporation challenged this decision in the High Court, which upheld the Tribunal's order vide order dated 29th November 2000, and dismissed the Writ Petition
6. The Corporation further challenged the High Court order before the Supreme Court. SC dismissed the appeals and opined that:
    a. the amounts due from the Corporation will be determined only with respect to those employees: -
        i. who are identifiable and
        ii. whose entitlement can be proved on the evidence.
    b. Further, in the event the record is not available with the Corporation (at this belated stage), it would not be obliged to explain its loss, or that any adverse inference be drawn on this score.

Issues for consideration by EPF assessing officers: -

1) Whether the judgment mandates that assessments without identifying employees may not be in accordance with statutory provisions?
2) In situations with identifiable complainants and a non-compliant employer, would permitting assessing officers to consider employee evidence comply with legal requirements for fair assessment?

Please send your observations/response within fifteen days to rpfc.legal@epfindia.gov.in

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ORDERS UNDER SECTION 7A OF THE ACT DATED 21-12-2023 IN PROCEEDINGS BEFORE THE RPFC-I, RO NARIMAN POINT

Navendu Rai
RPFC-I (Legal)
EPF HQ

Municipal Corporation of Greater Mumbai (MCGM), an establishment covered under the EPF & MP Act 1952 (Act) w.e.f. 08-01-2011. The establishment engages various contractors in connection with activities related to its area of operation.

The establishment: -

i. Challenged the application of the Act to MCGM- stating that the relevant entry in the Schedule head stated that "*Municipal Councils and Municipal Corporations constituted under sub-clauses (b) and (c) of clause (1) of article 243Q of the Constitution of India".*
It was the contention of the establishment that MCGM is set up (1888) under a statute which pre-dates insertion of Article 243Q in Constitution of India (1st June 1993). Further, that Bombay Municipal Corporation has its own PF Scheme for its regular employees and thus not covered by the Govt of India notification dated 8/1/2011.

ii. Challenged that the EPF liability of such contractor establishment engaged by MCGM, which are independently registered with EPFO, cannot be fastened to MCGM.

The assessment order addresses both the issues raised above in the following manner:

i. The contention vis-à-vis the provisions of Article 243 ZF of the Constitution of India is relevant. Article 243ZF is included in Part IX A of the Constitution of India, which was inserted by Constitution, 74th Amendment Act of 1992 [w.e.f. 01.06.1993) reads as under: -

> *"Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitutions [Seventy-fourth Amendment] Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier.*
> *Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.*

The MCGM's argument based on the Kolkata High Court order and Article 243Q is countered by pointing to Article 243ZF of the Indian Constitution. Additionally, the Municipal Council Act and the EPF & MP Act operate under different constitutional provisions, Entry 5 of List II, and Entries 23 & 24 of List III respectively. Therefore, the Municipal Council Act cannot supersede the social security benefits established by the EPF & MP Act. Consequently, the MCGM/BMC falls under the purview of the EPF & MP Act, 1952, effective from January 8th, 2011.

ii. The BMC PF Scheme is applicable only to the regular employees and excludes the contractual employees. Contractual employees are considered as employees of principal establishment and responsibility for ensuring compliance in respect of such employees falls on MCGM. Exclusion of contractual employees from PF Scheme is contrary to the mandate of the Act and disentitles any municipal council from the exclusion under section 16 of the Act.

iii. Section 2(e) of the Act, which defines "employer" read with Section 2(f), which defines "employee," which definition includes contractual employees means that MCGM is considered an "employer" under the Act, including for contract workers engaged by or through a contractor, notwithstanding that contractor establishments are independently registered as an establishment with EPFO. Accordingly, MCGM is obligated to comply with the provisions of the Act.

iv. The assessment order having thus established applicability fastens liability of ₹228,07,21,559 (Rupees Two hundred twenty-eight crores seven lakhs twenty-one thousand five hundred fifty-nine only) towards the PF and allied dues pending (not including 7Q & 14B dues) for the period from 01/2011 to 08/2016 on MCGM.

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SLP (C) No. 30357-30358 of 2017 in the matter of Dr. Arun Gopal Agarwal Vs The Union of India & Ors

Paritosh Kumar
RPFC-I (Legal)
EPF HQ

The matter relates to non-payment of interest on the amount transferred in inoperative account. The petitioner has prayed for quashing of the Gazette Notification No. GSR25-E dated 15/01/11 issued by Ministry of Labour and Employment, Govt. of India, through which the above amendments were brought and also EPFO Circular No. Coord./3(2)2010/Inoperative account/92370 dated 25.01.2011 through which specific clarifications were issued on this.

Brief:

1. Arun Gopal Agarwal filed a writ petition before Hon'ble High Court of Delhi challenging a notification dated 15.01.2011 by the GOI, MoLE, amending the EPF Scheme 1952. The amendment, which substituted paragraph 60(6), stated that "interest shall not be credited to the account of a member from the date on which it has becomes inoperative account, under the provisions of sub-paragraph (6) of paragraph 72".
2. The petitioner, a retiree from Central Electronics Limited, received sum of Rs. 40,34,821/- towards his final PF settlement. However, he claimed an additional sum, of Rs. 4,52,728/- contending that the respondents' action of paying interest only till 31.03.2011 is illegal. He argued that interest should have been paid till 31.05.2012 as per the EPF Scheme.
3. The petitioner challenged the amendment, alleging it to be arbitrary and illegal, citing a Punjab and Haryana High Court judgment in CWP No.10071/2014(O&M) dated 14.09.2015 titled Jagdish Kumar vs. EPF Commissioner
4. The High Court, after considering the provisions of the EPF Scheme, the petitioner's contentions, and the genesis of the amendment, upheld the validity of the amendment. It noted that the amendment aimed to address issues related to inoperative accounts, reduce the burden on the EPFO, and ensure the effective functioning of the EPF Act as a social security measure. The court dismissed the writ petition vide order dated 28.11.2016, emphasizing that the amendment comply with due process and the Act's beneficial nature. Further, the Court admitted that the EPF Scheme, 1952, and its amendment dated 15.01.2011 were enacted by the Central Government under the authority of the EPF Act. There is a legal presumption that such legislation is constitutional and valid. The burden of proof rests on anyone challenging its validity to demonstrate its invalidity.
5. Against the above order the petitioner filed a review application, claiming an error apparent on the face of the record. The petitioner argued that the court did not consider the fact that the government utilizes the amount in a member's account to earn interest, despite the plea being raised in the original petition.
6. The High court rejected the review application, citing settled law that prohibits expanding the scope of review by repeating old arguments or attempting to revisit grounds already taken. The court emphasizes that the mere absence of specific reference to a particular ground is not a valid reason for seeking a review.
7. Additionally, the petitioner referred to government notification dated 11.11.2016, claiming it restores the position existing before the 2011 notification. However, the court found no merit in his submission, noting that the notification was not presented during the original arguments and does not have retrospective application. As a result, the review petition was also dismissed vide order dt 21.07.2017 for lacking merit.
8. The aforesaid orders of the Delhi High Court, were challenged by the Petitioner before the Hon'ble Supreme Court.
9. The Hon'ble Apex Court vide order dt 30.01.2024 dismissed the SLP stating that they are not inclined to interfere with the impugned judgment(s) and order(s).

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CRM-M-36226 of 2018 (O&M) EPFO vs Narinder Singla before Hon'ble Punjab and Haryana High Court

Abhishek Bisht
ASO (Legal)
EPF HQ

In a recent judgment, the Punjab and Haryana High Court delivered a significant ruling regarding the protection afforded to officers of the Employees' Provident Fund Organization (EPFO) and the Employees State Insurance Corporation (ESIC) under Section 18 of the EPF & MP Act. The case centered around a complaint filed by a brick kiln owner against EPFO and ESIC officers, alleging misconduct and forgery.

Background: The complainant, a brick kiln owner, filed a criminal complaint against officers of EPFO and ESIC, accusing them of inducing him to apply for EPF and ESI coverage and subsequently implicating him in non-compliance with the statutory regulations. The officers, in response, petitioned the High Court to quash the complaint and the summoning order issued by the Judicial Magistrate. They argued that their actions were done in good faith and in accordance with the EPF & MP Act and the ESI Act.

Legal Analysis: The judgment of the Punjab and Haryana High Court delved into the legal provisions governing the actions of EPFO and ESIC officers, particularly focusing on Section 18 of the EPF & MP Act. This section provides immunity to officers from prosecution for acts done in good faith in the discharge of their official duties. Additionally, the court examined Section 93 of the ESI Act, which designates officers of ESIC as public servants.

The court emphasized the societal importance of EPF and ESI regulations, which aim to provide social security benefits to employees. It underscored the duty of officers to ensure compliance with these regulations and acknowledged the significant role they play in enforcing statutory obligations.

Key Findings: After careful consideration of the submissions from both parties, the High Court made several key findings:

1. Officers of EPFO and ESIC are protected from legal proceedings under Section 18 of the EPF & MP Act for acts done in good faith.

2. The complainant's decision to file a criminal complaint instead of contesting EPF and ESI proceedings before the respective authorities was deemed malicious.

3. The court emphasized the importance of protecting public officers from unwarranted legal proceedings, especially when acting within the scope of their official duties.

Implications: The judgment of the Punjab and Haryana High Court has significant implications for the legal landscape surrounding the duties and protections of public officers. It reaffirms the importance of acting in good faith while discharging official duties and provides clarity on the scope of immunity afforded to EPFO and ESIC officers.

Furthermore, the ruling serves as a deterrent against the misuse of legal processes to target public officers. It underscores the need to respect the statutory framework governing EPF and ESI regulations while ensuring accountability for genuine grievances. The judgment of the Punjab and Haryana High Court represents a significant development in the legal interpretation of the protections available to EPFO and ESIC officers. By upholding the principle of good faith and protecting public officers from malicious prosecution, the court has reinforced the integrity of the statutory framework governing EPF and ESI regulations. Moving forward, this ruling is likely to have a lasting impact on the enforcement of social security laws and the accountability of public officers in India.

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The Essence of Section 7-A Inquiry and Legal Protections for Quasi-Judicial Officers under the EPF Act

C Ramesh,
SS, RO, Vellore.

The Indian judicial system is based on the fundamental principle of the 'adversary system' of justice, which is distinct from the 'inquisitorial system.' In the adversary system, the quasi-judicial authority tasked with adjudicating a case is presented with arguments and evidence from both sides, and it renders judgment based on these presentations. The authority does not initiate its own inquiries or investigations, nor does it actively solicit evidence; rather, it assesses the arguments and evidence presented by the parties involved. On the other hand, the inquisitorial system grants quasi-judicial authorities the power and duty to actively seek out evidence to establish the truth. Under the inquisitorial system, the quasi-judicial authority is not a mere observer but an active participant in the proceedings. It is vested with the power and duty to actively seek out evidence to establish the truth. This includes conducting inquiries, leading evidence, and pursuing avenues of investigation with the aim of uncovering all relevant facts, thereby instilling confidence in the process.

The distinction between these systems was highlighted in the case of *Uttarpara Children's Own Home v Union of India*, [W.P. No.20734 of 2005, decided on 07-08-2009] where the Calcutta High Court affirmed that the quasi-judicial proceedings under Section 7-A of the EPF Act are essentially inquisitorial in nature rather than adversarial. This means that the authority conducting the proceedings is not merely a passive arbiter between opposing parties but takes an active role in uncovering and assessing evidence to arrive at a just decision.

Inquiry Authority Lacks Investigative Powers

It is important to note that no power of investigation has been conferred on any of the officers under Section 7-A of the Act. The Act does not contain any provision, either express or implied, authorising any officer to investigate matters arising under the Act. The scope of Section 7-A is limited to conducting an inquiry to determine the amount due from any employer under any of the provisions of the Act or Scheme, as the case may be. [*Provident Fund Inspector vs Mohammed* [Kerala (DB) 1980 Ker LT 698]. In *Anandji Haridas and Co. vs S.P. Kasture*, [1968 AIR 565, 1968 SCR (1) 661] the Supreme Court held that a fact which was already there in records does not, by its mere availability, becomes an item of 'information' till the time it has been brought to the notice of the assessing authority under the Sales Tax Act.

Section 7A Inquiry is a Judicial Proceeding

In *Amit Vashistha vs Suresh and another*, [Crl. Appeal No.245/2020, decided on 31-08-2017], the Supreme Court held that the proceedings under Section 7-A are deemed to be a judicial proceeding by fiction. Such a judicial proceeding can well be equated for that purpose with a Court under Section 195(1)(b)(i) of the Criminal Procedure Code. Citing a previous case, *Lalji Haridas vs State of Maharashtra*, [(1964) 6 SCR 700], the Supreme Court held that if a person offers an insult to a public servant sitting in a judicial proceeding under Section 7-A or causes interruption to him, while he is so sitting at any stage of a 1judicial proceeding, the complaint has to proceed from the public servant himself. That is the effect of Section 195(1)(b) of Cr.P.C.

Assessing Officer comes under the Judges (Protection) Act, 1985

In *E.S.Sanjeeva Rao vs Central Bureau of Investigation* [2012 CriLJ 4053], the Bombay High Court held that no criminal prosecution could be launched against the Regional Provident Fund Commissioner merely on the ground that he made a wrong assessment. The facts of the case were that the Central Bureau of Investigation conducted an enquiry and concluded that the assessment made by the Regional Provident Fund Commissioner was wrong and the employer's liability was much higher than the assessment. The CBI filed a prosecution complaint against the Commissioner under Section 420 of the IPC and the Prevention of Corruption Act. The Bombay High Court, quashing the prosecution, held that the Regional Provident Fund Commissioner, while passing an order under

Section 7-A, is a judge within the definition under Section 19 of the IPC and Section 2 of the Judges (Protection Act, 1985). Consequently, prosecuting such an individual based on an order issued under Section 7-A is prohibited under Section 77 of the IPC or Section 3(1) of the Judges (Protection) Act, 1985.

In *Swapan Kumar Bankura vs Union of India*, [WPCT No.176 of 2014, decided on 22-12-2014], the facts of the case for consideration before a Division Bench of the Calcutta High Court were that disciplinary proceedings were initiated against an officer who conducted an inquiry under Section 7-A on the grounds that he concluded the inquiry by exercising powers beyond his jurisdiction. The Calcutta High Court, relying on the Supreme Court order in *Union of India and another vs R.K.Desai* [1993 SCC (L&S)], struck down the disciplinary proceedings, holding that no proceedings should have been initiated against the petitioner in the absence of any specific allegation of misconduct, as the petitioner had exercised his judicial function under Section 7-A without any corrupt or improper motive. Thus, no disciplinary action can be initiated in the absence of a specific allegation regarding the discharge of an officer's judicial or quasi-judicial function under corrupt or improper motive.

Protection under the Good Faith Clause

It is important to note that Sections 18 and 18-A of the EPF Act specify that no legal action, including suits or prosecutions, can be initiated against the Central or State Governments, Tribunal Presiding Officers, authorities referred to in Section 7A, Inspectors, or any other individuals for actions taken in good faith under the Act. Additionally, the authorities mentioned in Section 7A are considered public servants per Section 21 of the Indian Penal Code.

These provisions clearly indicate that no prosecution can be brought against the Presiding Officer of a Tribunal or any authority mentioned in Section 7A of the Act for actions taken in good faith under the Act. Furthermore, the authorities mentioned in Section 7A of the Act are considered public servants as defined in Section 21 of the IPC.

Given that these authorities are deemed public servants under Section 21 of the IPC, Section 197 of the Code of Criminal Procedure requires that no court can take cognisance of any offence alleged to have been committed by them while acting or purporting to act in the discharge of their official duties, without the prior sanction of the Central or State Government, as applicable. [*Employees Provident Fund Organisation vs Narinder Singh*, CRM No.36226 of 2018, decided on 23-02-2024, P & H HC].

However, it is self-evident that offences such as cheating, embezzlement, bribery, assault, abuse, or defamation, as well as actions involving flagrant abuse of authority or blatant violation of the law, do not fall under the protection of acting or purporting to act in the discharge of official duty. In all such cases, the protection contemplated by Section 197 of the Cr.P.C. does not apply.

Conclusion

The institution of legal safeguards, such as the Judges (Protection) Act of 1985, strengthens quasi-judicial officers' position by protecting them against unfounded prosecutions stemming from their official duties. This acknowledgement of the quasi-judicial officers' judicial status highlights the importance of exercising caution and discretion when considering legal actions against them. These legal advancements underscore the critical importance of preserving the integrity of quasi-judicial proceedings and adhering to the principles of natural justice. They reaffirm the essential role played by quasi-judicial officers in administering justice and emphasise the necessity of striking a careful balance between accountability and safeguarding their rights within the legal framework.

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Karnataka HC holds Para 83, Employees Provident Fund Scheme, 1952 and Para 43A, Employees' Pension Scheme, 1995, unconstitutional.

[W.P.No.18486/2012 and connected writ petitions (Stone Hill Education Foundation v. EPFO), challenging Para 83 of the EPF Scheme, 1952-International workers]

Abhishek Bisht
ASO (Legal)
EPF HQ

In a significant legal development, the Karnataka High Court, presided over by Justice K.S. Hemalekha, recently invalidated Para 83 of the Employees Provident Fund (EPF) Scheme, 1952, and Para 43A of the Employees' Pension Scheme, 1995. The court's decision stemmed from a series of petitions challenging the constitutional validity of these provisions, arguing that they were arbitrary and unconstitutional. This analysis examines the background of the case, the contentions of the parties involved, the court's assessment, and the potential implications of the ruling.

Background: The Union of India, through a notification dated October 1, 2008, introduced Para 83 in the EPF Scheme and Para 43A in the Pension Scheme, extending coverage to "international workers." These provisions came under scrutiny through various petitions alleging arbitrariness and unconstitutionality.

Contentions: The petitioners argued that Para 83 of the EPF Scheme included international workers under the EPF Act regardless of their salary, while employees earning above Rs. 15,000 per month were excluded. They contended that this requirement unfairly burdened international workers, who often worked abroad for limited periods, with mandatory EPF contributions on their entire global salary. The absence of a salary ceiling for international workers was deemed contrary to the EPF Act and imposed undue financial strain on employers.

Respondent's Argument: The respondent, representing the Union of India, defended the amendments, citing the government's power to make special provisions for different types of workers. They highlighted the 2008 amendment to the EPF Act, which inserted Para 83 into the EPF Scheme, aiming to extend coverage to international workers. The government also emphasized bilateral Social Security Agreements (SSAs) with several countries as the basis for these amendments, ensuring social security benefits for Indian workers abroad.

Court's Assessment and Findings: The court's evaluation centered on whether the impugned provisions violated Article 14 of the Constitution, guaranteeing equality before the law. It noted that legislative modifications to the EPF Scheme fall within the statutory power of the Central Government, subject to parliamentary ratification. However, the court emphasized that such modifications must align with the fundamental objectives of the EPF Act.

The court observed that the EPF Act aimed to protect industrial workers and promote savings for retirement, primarily targeting those in lower salary brackets. It pointed out that the Act's evolution from initially covering employees earning Rs. 3,500 or less to the current Rs. 15,000 ceiling reflected this intent.

Regarding Para 83 of the EPF Scheme, the court deemed its introduction as arbitrary, noting its divergence from the EPF Act's principles. It highlighted disparities in contribution requirements between Indian and foreign workers, particularly those from non-SSA countries, as discriminatory and violative of Article 14.

The court's decision to strike down Para 83 of the EPF Scheme and Para 43A of the Pension Scheme carries significant implications. The ruling may necessitate policy revisions to ensure equitable treatment of all workers and alleviate undue financial burdens on employers.

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Exclusion- the most controversial subject

Section -20 of The code on social security-2020

(Section-16 of EPF & MP Act -1952)

JASVIR
REGIONAL PF COMMISSIONER-I, LEGAL
ZO, BENGALURU.

The Social Security Code (SSC) 2020 consolidates and amends the laws relating to social security with the goal of extending social security to all employees and workers in both the organized and unorganized sectors. Among the various legislations that deal with provident fund matters, the Employees' Provident Funds & Miscellaneous Provisions Act of 1952 stands out as the most comprehensive. Here, we explore into Section 16 of the EPF & MP Act 1952, which deals with exclusions, and explore its practical implications, issues, and recommendations.

MANDATORY COVERAGE AND EXCLUSIONS

Section 1(3) of the EPF & MP Act of 1952 outlines the criteria for mandatory coverage of establishments under the Act, with exclusions specified in Section 16. This section stipulates that certain establishments can be exempt from the Act's provisions if they meet specified conditions, ensuring that the Act remains relevant and adaptable to various employment scenarios. To understand these conditions and the purpose of their incorporation, we need to look into the historical background for the inclusion of this section.

HISTORICAL BACKGROUND

The EPF & MP Act of 1952 arose as a response to the changing employment dynamics from the earlier PF Act of 1925. While the PF Act of 1925 catered primarily to government employees, the EPF & MP Act was designed to encompass a broader spectrum of establishments across various industries. By the 1970s, with the introduction of the Contract Labour (R&A) Act of 1970, employment conditions had significantly evolved. The government, now a major employer through contractual arrangements, necessitated stringent enforcement of PF provisions to protect contractual workers including purely government departments, schools, colleges, universities, and government hospitals. Therefore, there is a need to strictly enforce the provisions of exclusion in order to secure the interests of these poor contractual workers.

LEGISLATIVE ACTS

In India, broadly the following acts are regulating the provisions related to PF/Pension:

i. Provident Fund (PF) Act-1925
ii. EPF & MP Act-1952
iii. Coal Mines Provident Fund & Miscellaneous Provisions Act-1948
iv. Seamen’s Provident Fund Act-1966
v. Assam Tea Plantation Provident Fund Act-1955
vi. Public Provident Fund Act-1968
vii. Pension Fund Regulatory and Development Authority (PFRDA) Act-2013

Of these, the PF Act of 1925 is the oldest, primarily regulating government and select public sector employees' provident funds. The EPF & MP Act of 1952, however, extends to a wider range of industries, making it a comprehensive legislation on PF matters and it is a complete code in itself

therefore it was clear that there will be repugnancy between the provisions of PF Act-1925 And EPF & MP Act-1952 as a particular establishment may be covered under PF Act-1925 but that particular establishment may be falling in a particular sector/industry notified under EPF And MP Act-1952. We can understand this with the help of one illustration: -

ILLUSTRATION

Assume, XYZ Airline as institution belonging to public sector and notified as one of establishment covered under PF Act-1925. Suppose, aviation industry is notified as one of industry eligible for coverage under EPF And MP Act: 1952. Naturally, Aviation Industry is covered under EPF And MP Act: 1952 so XYZ Airline being one of establishment falling under that Aviation Industry need to be covered under EPF And MP Act: 1952. In that circumstance XYZ Airline need to be covered under two statutes related to same field of legislation. This was going to create a problem of repugnancy between two legislations. As well as the problem of double deduction of PF for employees under both the statutes.

SECTION 16: CONDITIONS AND CLAUSES

Section 16 provides detailed criteria for exclusions, which can be broadly understood through its clauses.

At first, we will discuss first clause which state as under:

1. "(1) This Act shall not apply— (a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power;"

WE are aware that threshold for coverage under section 1(3) of the Act is 20 employees so this clause is overruling the provision of section 1(3). This clause was incorporated keeping in mind the financial constraint being faced by handicraft and similar small-scale industries working in co-operative sector, which provide jobs to large number of craftsmen. The clause is having 3 conditions to claim exclusion: -

i. Establishment must be registered under Co-operative Society Act-1952 or any other law related to co-operative societies in any State.
ii. Employment strength or membership strength must be less than 50 ***persons***.
iii. Establishment must be working without the aid of power.

Here, one important aspect needs to keep in mind that legislature on wisdom has used the wording "persons" as co-operative society generally constituted by members and employer-employee relationship between members and society will be deemed on crossing the threshold for exclusion. We have to keep in mind that condition no ii & iii are connected with conjunction "and" that means both the conditions need to be satisfied individually. Here, we need to bear in mind that "aid of power" means that use of power for the purpose for which co-operative society was incorporated. For example, there is a society of weavers then use of power means, any power aided instrument should not be used in weaving. It does not mean that power cannot be used ever for the basic purpose of lighting in the society campus.

2. Clauses 2 & 3 of section 16 are similar in nature therefore taken together for discussion, these two clauses state as under: -

"To any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are 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 governing such benefits;" or

"To any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits."

In case, we are reading both the clauses then it is clear that under clause "2" establishment must be belonging or under the control of Appropriate Government and it is not necessary that establishment must be set up under any Act. Even if, any establishment is set up by any administrative order but it is belonging to or under the control of Appropriate Government then it will be sufficient. While, in clause "3" legislature laid down conditions for exclusion of any establishment set under any Central, State or Provincial Act.

In case, legislature desires to give exclusion merely on the ground that establishment is belonging to or under the control of Appropriate Government or set up by any Act passed by the appropriate legislature then legislature would have stopped at this point. But Legislature has added another condition keeping in mind, as discussed above that any ideal situation exist on paper where all the employees are falling in the category of regular employees only. This condition state that "whose employees" and we have to keep in mind that here word "employees" used in plural form as "employees" that means it implied that word "employees" to be read as "all employees" for harmonious construction of the definition. One more aspect we have to keep in mind that here for the definition of "employee" we need to refer the said definition in EPF & MP Act-1952 but not from the "bye laws" of the institution which is disputing the coverage as the word "Employee" is well defined in the Act. That means in case any institution claiming exclusion under clause 2&3 must be belonging to or under the control of Appropriate Govt or set up under any Act passed by appropriate legislature and all the employees (let it be casual, contractual, daily wages or part time) must be entitled to the benefit of contributory provident fund or old age pension. In case, establishment is providing benefits of contributory provident fund or old age pension only to regular employees, then institution cannot claim the benefit of exclusion on the ground of repugnancy. In that circumstances establishment will be treated as excluded to the extent of regular employees only. In case, we are taking the logic that once any establishment is excluded then it will be excluded fully then it will be similar to reading the clauses 2 and 3, only to the extent of first half of the definition and it will be rendered the purpose of incorporation of second half of the definition as null and void. Not only that but it will give a license to any institution to exploit the social security interest of all employees (other than the regular employees such as casual, contractual, daily wages and part time employees) as institution will claim exclusion under EPF & MP Act 1952 and no enforcement mechanism is provided in PF Act-1925. In fact, as per bye laws of the institutions any employee other than regular employee will not be covered under the definition of employee and keeping these contractual employees out of preview of PF Act-1925.

3. Now, we will discuss of 4th Clause of section 16, which states that: -

"If the Central Government is of opinion that having regard to the financial position of any class of 9 [establishments] or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt 10[whether prospectively or retrospectively] that class of 9 [establishments] from the operation of this Act for such period as may be specified in the notification.]"

The phrase "specified in the notification" in this clause empowers the Central Government to exempt, not exclude, a class of establishment from a particular sector or industry notified under the Act, for a specified time period, effectively rendering the Act inapplicable to them. As illustrated above, let's

consider a scenario where a notification was issued to bring the aviation industry under the Act. However, subsequently, the Central Government discovers that certain establishments, perhaps those involved in maintenance, are experiencing financial crises due to the unavailability of aviation spare parts in the global market, owing to circumstances beyond their control. In such a case, the Central Government, through the issuance of a notification, can exempt that class of establishments from the provisions of the Act for a designated period, either prospectively or retrospectively. It's important to note that this power is vested solely in the Central Government and not in the Appropriate Government. Furthermore, it applies only to classes of establishments already covered under the Act, which is why the term "exempt" is used instead of "exclude". Additionally, this exemption must be for a specific period only. It's essential to distinguish this exemption from the exemption under Section 17, which pertains to the formation of a separate trust. Here, we one question come to our mind that legislature has incorporated the provision of exemption separately then why legislature has included this provision in Section 16 of the Act as this section is exclusive for provisions related to exclusion. For that purpose, we need to understand the purpose of incorporation of any particular clause. This clause literally appears to be clause of exemption but for the practically to be seen then this is a case of **deemed exclusion** and difference is that the particular deemed exclusion is for a specific period only. In my considered opinion draftsman in his wisdom put this clause of **literal exemption** but **deemed exclusion** as by nature this clause is more near to provisions of exclusion then exemption.

One more condition is added in The Code on Social Security-2020 which state that:-

“To the employees who immediately before the commencement of this Code were receiving benefits of Provident Fund under any Central or State enactment.”

This is nothing but one kind of clarificatory definition in order to avoid any ambiguity at the time of interpretation of this section.

CHALLENGES AND RECOMMENDATIONS

Despite the structured exclusions, the lack of uniform rules and enforcement mechanisms often leads to the exploitation of social security provisions. Excluded establishments, especially those under Clause 3, may not adhere to the stipulated contribution rates or benefits, resulting in inadequate social security for employees.

A notable concern raised by the Parliamentary Committee in its 42nd report highlights that many excluded organizations develop their own PF rules, which may not favour employees. The committee recommended establishing norms and guidelines for these establishments, ensuring uniformity and welfare for employees.

To address these challenges, the following steps are recommended:

- Uniform Regulations: Develop and enforce uniform rules and regulations across all excluded establishments to ensure consistent benefits and contributions.

- Monitoring and Compliance: Assign regulatory oversight to the Employees' Provident Fund Organization (EPFO) to monitor compliance and manage the provident funds of excluded establishments effectively.

- Administrative Orders: The Ministry of Labour & Employment may issue administrative orders authorizing EPFO to oversee and enforce compliance for a specified period, ensuring all establishments meet exclusion conditions.

CONCLUSION

The EPF & MP Act of 1952, complemented by the Social Security Code 2020, aims to provide a robust framework for provident fund coverage. However, effective implementation and stringent enforcement of exclusion provisions are crucial to safeguarding the interests of all employees, especially contractual and part-time workers. By addressing the existing gaps and ensuring compliance, the goal of comprehensive social security can be achieved, benefiting the wider workforce.

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JANUARY, 2024
BEFORE
THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA
WRIT PETITION NO.2530 OF 2012 (L-PF)

BETWEEN:

METLIFE INDIA INSURANCE CO. LTD.,
BRIGADE SESHAMAHAL 5 VANI VILAS ROAD, BASAVANAGUDI, BANGALORE – 560 004.
…PETITIONER

AND:

THE REGIONAL PROVIDENT FUND COMMISSIONER
BHAVISHYANIDHI BHAVAN NO.13, RAJARAM MOHAN ROY ROAD,
BANGALORE – 560 025. ... RESPONDENT

Sub: High Court Quashes EPFO Proceedings Against MetLife India Insurance Co. Ltd.

D JAYPRAKASH
ACCOUNTS OFFICER,
ZO, BENGALURU.

Gist of the Writ.

On January 18, 2024, the High Court of Karnataka, Bengaluru, issued a judgment in the case of M/s. MetLife India Insurance Co. Ltd. Vs. The Regional Provident Fund Commissioner. The ruling, delivered by the Hon'ble Justice K.S. Hemalekha, regarding the legality of the proceedings initiated under Section 7A of the EPF & MP Act, 1952, against M/s. MetLife India Insurance Co. Ltd. (hereinafter referred to as "MetLife").

The primary issue concerned the applicability of the EPF & MP Act, 1952, to MetLife employees working in Jammu and Kashmir, a state that has its own Provident Fund legislation, the Jammu and Kashmir Provident Funds Act, 1998 (J & K PF Act, 1998).

It is noted that from April 2004 to April 2009, MetLife covered its employees working in Jammu and Kashmir under the EPF & MP Act, 1952. However, MetLife later contended that the EPF & MP Act, 1952 does not apply to Jammu and Kashmir, which has its own Provident Fund Act. Consequently, from May 2009, MetLife began covering its Jammu and Kashmir employees under the J & K PF Act, 1998.

The Regional Provident Fund Commissioner, Bengaluru, issued a notice to MetLife under Section 7A of the EPF & MP Act, 1952, for not covering the employees working in the state of Jammu and Kashmir under Section 1(2) of the EPF & MP Act. MetLife challenged the legality of this notice and the proceedings initiated under Section 7A, asserting that the EPF & MP Act, 1952, was not applicable in state of Jammu and Kashmir.

METLIFE brought to the notice of the EPFO about the issuance of the notice by the Deputy Provident Fund Commissioner, Jammu and Kashmir directing the employers to pay damages at 25% and interest @ 9% failing which the revenue recovery proceedings would be initiated against METLIFE and therefore, petitioner requested the respondent to transfer the provident fund accumulation of the

employees based at Jammu whose provident fund contribution has been deposited with the respondent's office to transfer to the provident Fund Office at Jammu.

COURT PROCEEDINGS:

Petitioner's Arguments: - MetLife argued that the EPF & MP Act, 1952 does not apply to Jammu and Kashmir and that the employees were already covered under the J & K PF Act, 1998. MetLife communicated with both the Jammu and Kashmir Provident Fund authorities and the Bangalore RPFC, requesting the transfer of provident fund accumulations to the Jammu and Kashmir Provident Fund office.

Respondent's Position: - The RPFC initiated proceedings under Section 7A for defaulting on provident fund contributions and charges from May 2009, contending non-compliance by MetLife.

Thereafter a memo was filed by the RPFC-II, Legal, along with annexures, stating that for 261 members, provident fund accounts have been settled and amounts deposited in their individual bank accounts. The individual balances for the remaining members are detailed in an Annexure, which could not be settled as these members have not applied for account transfer or withdrawal.

COURT'S OBSERVATION:

The Hon'ble Court held that the application and affidavit reveal that the employer must submit forms to the RPFC for fund transfer. The petitioner-employer did not forward these forms, preventing the respondent from obtaining employee details and consent for fund transfer. Without Form Nos. 19 and 13, the respondent could not release the funds. If the employer submits these forms, the respondent will release the funds to the EPF accounts in Jammu and Kashmir. Granting the petitioner liberty to forward the forms would address their grievance. However, the Court typically does not interfere with Section 7A notice proceedings, but in this case, the notice needs to be quashed due to the unique circumstances.

JUDGMENT:

The court quashed the notice dated January 9, 2012, issued under Section 7A of the EPF & MP Act, 1952. MetLife was granted liberty to submit Form Nos. 19 or 13 for transferring the provident fund accumulations of its employees to their respective EPF accounts in Jammu and Kashmir.

The RPFC was directed to transfer the funds within four weeks of receiving the completed forms from MetLife.

WRITERS OPINION: This judgment provides clarity on the jurisdictional boundaries of the EPF & MP Act, 1952, particularly in relation to states with their own Provident Fund legislation like Jammu and Kashmir. It underscores the importance of adhering to the correct legal framework for provident fund contributions and ensures that MetLife's employees in Jammu and Kashmir receive their due provident fund benefits under the appropriate state law.

For MetLife, this verdict not only quashes the proceedings but also ensures the proper management and transfer of provident fund accumulations for its employees in Jammu and Kashmir. This case highlights the necessity for employers to stay vigilant about regional legal requirements to ensure compliance and avoid legal disputes.

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Analysis of the Karnataka High Court Judgment in respect of provisions contained in the Employees Provident Fund Act 1952 and Employees Pension Scheme 1995 relevant to International Workers.

Case Title: Karnataka High Court, StoneHill Education Foundation v UOI & Ors Writ Petition No 18486/2012.

Judgment delivered on: April 25, 2024.

Shri Satish Ratnakar,
Sr.SSA,
RO Dadar

On April 25, 2024, the Karnataka High Court delivered a landmark judgment that declared certain provisions related to international workers under the Employees Provident Fund (EPF) and Employees' Pension Scheme (EPS) as unconstitutional. This decision specifically invalidates Para 83 of the Employees' Provident Funds Scheme, 1952, and Para 43-A of the Employees' Pension Scheme, 1995, which mandated contributions from international workers on their total earnings without any salary cap.

Background and Legal Provisions:

The Employees' Provident Funds and Miscellaneous Provisions Act (EPF & MP Act) was enacted to provide retirement benefits to employees, especially those in lower salary brackets. The Act established two main schemes viz, the Employees' Provident Funds Scheme (EPF Scheme) and the Employees' Pension Scheme (EPS Scheme).In 2008, the Central Government extended these schemes to cover International workers through a notification. This required International workers to contribute to the provident fund based on their entire salary, unlike Indian employees who had a wage ceiling of ₹15,000 for mandatory contributions.

Grounds for Challenge :

The provisions were challenged by members of the Karnataka Employers Association and other petitioners on the grounds that they were discriminatory and violated Article 14 of the Indian Constitution, which guarantees equality before the law. The petitioners argued that these provisions unfairly targeted international workers by imposing mandatory contributions on their total earnings, irrespective of a salary ceiling, unlike their Indian counterparts.

Court's Findings:

The Karnataka High Court, in its detailed judgment, found the provisions to be discriminatory and arbitrary. Justice K.S. Hemalekha observed:

Violation of Article 14: The differential treatment of international workers compared to Indian employees was found to be violative of the right to equality enshrined in Article 14. The court emphasized that while the EPF & MP Act aimed to provide benefits to those in lower income brackets, extending these provisions to high-earning international workers did not align with the Act's objectives

Unconstitutional and Arbitrary: The court declared that the amendments made through Para 83 and Para 43-A were unconstitutional. It was noted that the legislative intent of the EPF & MP Act was not to encompass high-salary earners, and thus, requiring international workers to contribute on their entire salary was arbitrary.

Equity in Treatment: The judgment highlighted that non-citizen employees and Indian employees working in India should be treated equally. The court found that treating these two classes differently when working in the same country was unjustifiable and hence, unconstitutional.

Implications of the Judgment :

Financial Relief for International Workers: As a result of the judgment, international workers in Karnataka will no longer be obligated to contribute to the EPF based on their entire earnings. This will provide immediate financial relief but may necessitate alternative planning for retirement and social security benefits

Impact on Employers:

Employers will need to reassess their obligations under the EPF Act concerning international workers. This may lead to changes in employment contracts and compensation packages to adapt to the new legal landscape.

Retrospective Effect: The ruling has implications for contributions already made by international workers. Since the provisions have been held unconstitutional from their inception, there may be a need to reassess past contributions and address potential refunds or adjustments

Future Consideration:

The Employees' Provident Fund Organisation (EPFO) is currently evaluating its options following the judgment. There is an expectation that the order may be challenged due to its significant implications. Legal experts believe that the EPFO may appeal the decision: to ensure clarity and uniformity in the application of the provident fund laws.

In conclusion, the Karnataka High Court's judgment marks a significant shift in the treatment of international workers under the EPF Act, aligning it with constitutional principles of equality and non-discrimination. The decision underscores the need for legislative and administrative measures to ensure fair and equitable treatment of all employees working in India.

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ANALYSIS OF THE ORDER DT 16.06.2023 PASSED BY HON'BLE CGIT,KOLKATA IN R/O APPEAL NO. EPF-13 OF 2017 IN THE MATTER OF M/S COMPUTER EXCHANGE PVT LTD VS REGIONAL PROVIDENT FUND COMMISSIONER-II

Manoj Kumar,
Section Supervisor,
RO, Park Street.

On the basis of the Area Enforcement Officer report dated 29.06.2016 and as per direction of Assistant Provident Fund Commissioner (Compliance), Inquiry u/s 7A was initiated against M/s Computer Exchange Private Limited for the period from 11/2012 to 05/2016 due to the reason that the establishment has not deducted P.F. Contribution on Special allowances in r/o 6 (Six) employees and also failed to execute his duty as a Principal Employer.

First Summon Notice was issued on 04.07.2016 fixing the date of 7Q hearing on 25.07.2016 which was adjourned from time to time and finally concluded on 17.11.2016.

It appears from the Report dated 29.06.2016 submitted by the then E.O Sh. S.K.Auddy that

(a) P.F contribution not deducted on 'Special Allowance' inspite of the fact that the Basic Wages of the establishment as 2(b) of the E.P.F. & M. P Act'1952 is below Rs. 15,000/-. Therefore, the dues of the identifiable 6(Six) employees, namely (i) Sankar Roy, (ii) Tapan Biswas, (iii) Arindam Pramanik, (iv) Sabyasachi Bhattacharjee, (v) Amit Kumar Thakur & (vi) Ajoy Routh who have been deprived from extending legitimate benefits, have been included by Sh. S. K. Auddy, E.O at the time of calculating the dues of the establishment.

(b) Sh. Truptilal Pattnaik is engaged in ' Housekeeping' job and the expenses is booked under the nomenclature of Office Maintenance Expenditure A/c. Sh. Pattnaik raised Bill every month on regular basis has been segregated into Housekeeping maintenance charge and consumables.

(c) Sh. Kartike Bhandary is engaged in 'Electrical/Lan' connection job which the establishment undertake from various parties in connection with installation of computers to various offices and expenses is booked under the nomenclature of Hardware Service Charges A/c. Sh. Bhandary is an individual who raised Bill every month on regular basis in respect of the labour job only like cable laying and other Electrical job on regular basis on every month. The bill only include Labour Charge.

Subsequently, Sh. T.K. Mallick, E.O has taken over the charge of Sh. S.K.Auddy, E.O who was transferred to Regional Office, Kolkata. Sh. Mallick, E.O. first time filed his report on 12.08.2016 but the establishment categorically denied the deposition. Subsequently, Sh. Mallick, E.O filed his final report on 24.11.2016 pointing out that the payment made to Sh.

Kartike Bhandary & Sh. Truptilal Pattnaik and in r/o Special Allowance to 6 (six) employees, name of whom was mentioned by Sh. Auddy, the then Area E.O. In his report, are perennial in nature throughout the year. Therefore, Rs. 1,47,737/- was quantified by Sh. Mallick, E.O. as due from the employer in relation to M/s Computer Exchange Pvt. Ltd. from 11/2012 to 05/2016.

Considering the facts and circumstances, report of Area E.O.s submission of Employer and the documents available on records and placed before the Assessing authority, the amount of dues from the establishment was assessed and conveyed to M/s Computer Exchange Private Limited vide 7A Order bearing No. SRO/PRB/CC/WB/28765/7A Order/1107 dated 31.01.2017/13.02.2017.

After waiting for the stipulated period from the date of their receipt of the said 7A Order, Bank Attachment Order u/s 8F were issued in respect of 3(three) Bankers of the Establishments as per information available at this end.

Being aggrieved the establishment moved to EPFAT, New Delhi and an Order dated 24.03.2017 has been received from the Presiding Officer, EPFAT, New Delhi. As per the said Order, pre-deposit amount is reduced to 40% of the amount assessed u/s 7A of the Act only.
Operation of the impugned Order stayed subject to condition that the appellant shall pay pre-deposit amount within 30(thirty) days of that Order.

In compliance with the Order dated 24.03.2017, the establishment has furnished a Cheque bearing No. 161015 dated 10.04.2017 amount to Rs. 59,095/- i.e 40% of dues assessed u/s 7A. The said D.D forwarded to Recovery Cell on 11.04.2017.

Pay Order amounting to Rs. 1,81,328/- furnished by SBI Commercial Branch but the same returned to the respective Branch in compliance with the order of EPFAT, New Delhi.

Accordingly, Revocation of Bank Attachment Orders issued to the Banks have been issued on 12.04.2017.

Hon'ble Presiding Officer of CGIT vide his order dated 16.06.2023 set aside the impugned order dated 31.01.2017 under section 7A & 7Q .

The Hon'ble Presiding Officer of CGIT, Kolkata has held that the six(06) persons who were being paid special allowance , such allowance were not being paid to all employees working in the establishment but only those six person. The Presiding Officer applying the judgment of the Hon'ble Supreme Court for determination of Basic Wages in **"Regional Provident Fund Commissioner(II), West Bengal Vs Vivekananda Vidyamandir & Ors (Civil Appeal No. 6221 of 2011) and seven other Civil Appeals being No. 6221 of 2011, 3965 to 3970 of 2013 and 19 of 2019"** has held such allowances not to be a part of Basic Wages under section 2b of the Act.

Further, in respect of Kartike Bhandary the Presiding Officer has concluded that Shri Bhandary is only a service provider and was being paid for his services not only from the establishment in question but also from other establishment. Form-26AS has been referred by the Presiding Officer as an evidence of the same.

Lastly, in case of Sri Truptilal Patnaik , it has been held that he was not himself employed but providing a service of office boy which was not regular but occasional in nature. Therefore, the said Shri Patnaik can not be regarded as an employee of the establishment.

The Presiding Officer has appropriately applied the judgement of Hon'ble Supreme Court in the case of **"Regional Provident Fund Commissioner(II), West Bengal Vs Vivekananda Vidyamandir & Ors (Civil Appeal No. 6221 of 2011) and seven other Civil Appeals being No. 6221 of 2011, 3965 to 3970 of 2013 and 19 of 2019".**

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2000 LLR 514 Allahabad High Court, Hon'ble Mr. R. H. Zaidi, J. Writ Petition No. 3614 of 2000, decided on 24.01.2000. M/s Bansal Chemical Corporation Vs Presiding Officer, Employees' Provident Fund Appellate Tribunal New Delhi and Others.

Ram Anand
RPFC-I PDNASS

In the proceedings under section 7A 1(b) an order dated 2.6.95 was passed and against this no appeal was filed by the petitioner. An order under section 7A was passed on 18.2.98 to determine the amount due from the petitioner. Appeal under section 7I was filed by the Petitioner against the order dated 18.2.98 only. The appeal filed by the petitioner was allowed by the EPFAT and the operative portion of the said order is quoted below: -

"*The appeal is partly allowed. The impugned order is set aside to the extent that determination may be done by a speaking order disclosing the basis of determination. The appellants will be afforded one opportunity to produce all the records and statements extracted from those records to make out their own case quite clear. If because of some emergency they cannot produce all the records on one day, one more opportunity of one month may be given, failing which the case may be proceeded ex-parte and decided afresh.*

2. The coverage has already become final. The case is remanded back for re-determination in the light of observations made above."

Petitioner was aggrieved only by the last direction given by the appellate court that the question of coverage has already become final, on the grounds that in appeal questions of coverage as well as determination of amount both were raised. The Respondent submitted that order dated 2.6.95 itself was appealable but no appeal against the said order was filed and thus it attained finality and the petitioner, therefore, had got no right to challenge validity of said order by filing the present petition.

The Hon'ble Court noted that there may be cases where questions of coverage and determination of amount is decided by different orders on the same date or different date and a party feeling aggrieved by an order of question of coverage of the establishment under the provision of the Act has got a right to file an appeal under Section 7(I) of the Act. The Hon'ble Court held that no appeal was filed by the petitioner against order dated 2.6.95 and appeal was only filed against the order dated 18.2.98. In the memo of appeal, the petitioner might have taken ground regarding coverage also but the same cannot be deemed to be an appeal against the order dated 2.6.95, as the validity of the said order was not challenged by the petitioner by filing an appeal under Section 7(I) of the Act. Accordingly, the Writ petition was dismissed *in limine*.

A judgment is said to have attained finality when it is no longer subject to appeal or review, either because the time for filing an appeal has expired without an appeal being filed, or because all possible appeals have been exhausted and no further legal challenge is available.

When does a judgment attains finality?

1. **Expiration of Appeal Period**: If the time allowed for filing an appeal passes without an appeal being filed.
2. **Exhaustion of Appeals**: If an appeal is filed but all appellate options are exhausted (i.e., the highest court has ruled on the matter or denied further review).
3. **Settlement or Waiver**: If the parties settle the matter or if the right to appeal is waived, the judgment can attain finality.
4. **Issuance of a Mandate**: In some jurisdictions, a judgment becomes final when the appellate court issues a mandate or order finalizing the judgment.

- **Rule of res judicata** prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong.
- "When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are 'cause of action estoppel' and 'issue estoppel'". SCC 590 (Hope Plantations Limited Vs Taluk Land Board, Peermade & Another).

Legal battle on Applicability of Act on staff strength and Schedule Head "Hotel and Restaurant".

B. ATCHYUTA RAMAYYA (Sr. SSA) & D BHAVANA (SSA)
RO, VISAKHAPATNAM

Brief write up with reference to a case matter in r/o M/s. Hotel Shaymala paradise regarding applicability of Act on the staff strength and the schedule head i.e. Hotel and restaurant is not applicable to the appellant. The establishment approached EPFAT, New Delhi that the staff strength never reached 20. The EPFAT, New Delhi dismissing the petitioner's appeal and upholding EPFO 7A Order No.AP/VP/CC54/AP55054/7A/2009/5964 dated 11.02.2009. The appellant approached Hon' ble High court, Amaravathi. Lack of merits, the writ petition was dismissed subsequently, the appellant preferred an appeal against the judgment and order, dated: 21.032023 passed in WP No. 11955 of 2011 and the said appeal also dismissed with lack of merits. The establishment approached different legal forums but failed to sustain in every forum. the details are furnished hereunder.

Observations/Findings made and order pronounced by EPFAT, New Delhi in case No. ATA 229(1)2009 dated: 08.02.2011

The establishment M/s Hotel Shaymala Paradise has filed an appeal No. **ATA 229(1)2009** before Hon'ble EPFAT, New Delhi against the order passed u/s 7A of EPF & MP Act. The main contention of the appellant is that, "**the appellant was running a lodging business in the name of M/s Hotel Shaymala Paradise. The staff strength of the appellant never reached 20 and the Schedule head i.e. Hotel and Restaurant is not applicable to the appellant. The EPF Authority initiated a proceeding under Section 7A of the Act and covered the establishment under the head of hotel and restaurant alleging that it had employed more than 20 employees. The impugned order is illegal one.**"

Firstly, the applicability of the EPF Act to the appellant establishment is questioned. The tribunal had considered, the case of Warden cum Principal SHGFSC Vs. Dy. Commissioner reported in 2002 FLR at page 1148 the Hon'ble High Court of Madras held that, **"a building or establishment which provided living accommodation to transit visitors and sometime long residence and it often offers other facilities such as a meeting room entertainment facility to its guest and general public."** Admittedly, the appellant was providing residence temporarily to the visitors so the definition of the word Hotel includes the lodging facility so the appellant was rightly covered under the Schedule head of Hotel and Restaurant.

Further, it is contended that the Act is not applicable to the appellant as the staff strength never reached 20. For this the tribunal had considered the case of M/s Saraswati Constructions Company Vs. Central Board of Trustees reported in 2010 LLIR at page 684, the Hon'ble High Court of Delhi held that, **"it is a settled legal position that if any establishment or employer is not covered under the said Act, then it is for the employer to place sufficient cogent and convincing materials before the designated authority under an inquiry under Section 7A of the Act so as to satisfy the authority with regard to inapplicability of the Act and on failure to place any such material the onus cannot be shifted on the Authority to prove the applicability of the Act."** As the evidence of the employee and the attendance register, salary register which was filed by the employees and also which was maintained by the appellant shows that the appellant engaged 20 employees; the tribunal had found that the strength of staff reach 20.

In view of above, **the tribunal had dismissed the appeal**.

Observations/Findings made and order pronounced by High Court, Amaravathi in WP No.11955 OF 2011 dated: 21/03/2023.

The petitioner M/s. Hotel Syamala Paradise, Proprietor Eswara Hotels Private Limited has challenged the order dated 08.02.2011, passed in A.T.A.No.229(1) of 2009 by the 1st respondent – Employees‟ Provident Fund Appellate Tribunal, New Delhi (for short, "the Tribuna") under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, "the Act, 1952") dismissing the petitioner‟s appeal and upholding the order dated 11.02.2009 of the Employees Provident Fund Authority being Order No.AP/VP/CC54/AP55054/7A/2009/5964 under Section 7-A of the Act, 1952.

The contention of the petitioner before the appellate authority that the petitioner‟s establishment was not the hotel but only lodging though it was running the business in the name of hotel and consequently the Act, 1952 was not applicable was also rejected by the appellate authority after holding that the establishment was providing the lodging facility and consequently it was covered under the scheduled head of hotel and restaurant and was covered by the E.P.F. Act.

Learned counsel for the petitioner submitted that to the petitioner‟s establishment, Employees Provident Fund Act is not applicable because it did not engate 20 employees and the finding to the contrary is illegal, as it is evident formthe order of the Commissioner, that on the date of inspection by the Labour Officer, Circle-II, Visakhapatnam dated 20.02.2007 under the Minimum Wages Act, 1948, there were only 18 employees. No other submission was advanced by the learned counsel for the petitioner to challenge the impugned orders.

The Enforcement Officer during his visit to the establishment on 03.04.2007 procured **the copies of the attendance sheet for the months of January, 2007, February, 2007 and March, 2007 from the premises of the establishment, according to which the strength of the employees was 23, 21 and 18 respectively**. **The names of the employees as found from the physical verification and that all the salaries statements of February, 2007 and the copies of the attendance registers and the report of the Labour Officer, Circle-II, Visakhapatnam, who also visited the establishment on 20.02.2007 under the Minimum Wages Act, 1948, were crossed verified. The strength of the employees in the establishment was more than 20 and consequently the Act was applicable.**

The finding of the Commissioner that in petitioner's establishment **the strength of the employees reached 20, in October, 2002, is a finding of fact.** This finding has been arrived at on consideration of the material on record before the Commissioner in the form of various documents as mentioned in its order and also referred to in the earlier part of this judgment. The finding has been affirmed by the appellate authority after rejecting the certificate to the contrary in view of the overwhelming documentary evidence.

On a specific query to the learned counsel for the petitioner with respect to the certificate as mentioned in the appeal order showing the engagement of 15 persons, learned counsel for the petitioner submitted that the certificate is at the time of registration.

This Court is of the considered view that the matter is concluded by the concurrent finding of fact based on consideration of the material on record. The finding, therefore does not suffer from any infirmity perversity or illegality so as to call for interference in the exercise of writ jurisdiction.

Consequent upon such finding, the applicability of the Act, 1952 to the petitioner's establishment is also established.

The writ petition lacks merit and is dismissed.

Observations/Findings made and order pronounced by High Court, Amaravathi in the appeal No. WA No.864 of 2023 dated: 05/12/2023.

The petitioner, not being satisfied, challenged the order, dated 08.02.2011, passed by the Appellate Authority before the writ Court, by way of W.P. No.11955 of 2011, which, vide order dated 21.03.2023, was dismissed holding that concurrent finding of fact had been recorded based upon

consideration of the material on record and therefore, it suffered from no infirmity or perversity or illegality warranting any interference.

Learned counsel for the appellant would submit that the view expressed by the writ Court upholding the order of the Appellate Authority is unsustainable in law inasmuch as the authorities below ought not to have relied upon the record, which was produced by its disgruntled former employees of the petitioner's establishment. It was urged that once upon physical verification by the Enforcement Officer it was found that the number of employees was less than 20, then there was no question of applying the provisions of the Act to the establishment of the appellant.

Hon'ble High court opinion that the order under Section 7A of the Act is quite detailed and justifies how the provisions of the Act became applicable to the establishment of the petitioner. This view has been upheld by the Appellate Authority. Since a finding has been recorded on facts that the number of employees working in the establishment of the petitioner were more than 20, which attracted the provisions of the Act and since the said finding on a perusal of the order passed under Section 7A of the Act is sufficiently justified, the writ Court has rightly upheld the order passed by the Appellate Authority as warranting no interference.

Be that as it may, **the Appeal lacks merit and is accordingly dismissed**.

This case is an example that the matter is concluded by the concurrent finding of fact based on consideration of the material on record (i.e. the evidence of the employees and the attendance register, salary register which were filed by the employees and was maintained by the establishment throughout, but not only on the certificate of engagement of 15 persons at the time of registration of the establishment) even the establishment approached different legal forums but failed to sustain.

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CAPL/1888/2018 (Komal Singh Vs APFC, Agra)

Shri Dayanidhi Batsa
E.O. Regional Office-Agra

In Case No. WP/51060/2017 (Komal Singh Vs APFC, Agra & Others) the Court Ordered on 02.11.2017 to pay the PF amount and retrial benefits to member within 2 months from the date of production of Certified Copy of the order. Our office took immediate steps for compliance of the order passed by the Hon'ble Court but some delay in complying the order took place in order to follow the procedure. As the amount was forcibly recovered from the establishment but the establishment had not submitted the 3A/6A returns in respect of Shri Komal Singh and had also not allotted any PF Account Number to Shri Komal Singh.

After that the Petitioner Komal Singh Filed contempt Application CAPL/1888/2018 as his PF amount and retiral benefits was not settled. Court has directed to release the retiral benefits. Office has made the payment of EPF and pension. Since the Estt. did not file any returns the office itself issued a PF Number to complainant, crediting the amount in this PF number in order to settle the claim and thereafter settled his claim. Compliance affidavit has been filed on 18th May 2018. The case was not listed in the Hon'ble High Court Since 10.05.2018. The Panel advocate filed listing Application in Hon'ble High Court on 26.07.2024 and finally the contempt Application was disposed of on 06.09.2024.

The Court Ordered that "The affidavit dated 09.05.2018 was filed by the opposite party showing compliance of the order passed by the Writ Court. No reply to the aforesaid compliance affidavit has yet been filed. In view of the aforesaid, as the order passed by the Writ court has been complied by opposite parties, no further orders are required to be passed in the present contempt application. The contempt application is disposed of."

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Gujarat High Court Ruling: Cash Canteen Subsidy as a Key Component of Employee Benefits

B. Andrew Prabhu,
RPFC- I, Legal EPF HQ

In a judgment delivered by the Gujarat High Court, the legal status of 'cash canteen subsidy' has been defined, establishing its inclusion within the ambit of 'dearness allowance' as per Explanation 1 to Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). This ruling not only clarifies the interpretation of employee benefits but also underscores the legislature's intention to safeguard workers' rights amidst evolving industrial practices.

Background

The case arose from a dispute involving Tata Power Company Limited, wherein the company's contention that the food allowance paid to employees was not to be categorized as 'cash value of any food concession' under the EPF Act was challenged. The company had previously halted food supply through canteen facilities, opting instead to provide a food allowance. This situation prompted an investigation into whether the absence of actual food supply could nullify claims for dearness allowance considerations.

The Court's Analysis

The Gujarat High Court meticulously dissected the arguments surrounding the term "cash value of any food concession." It was held that this term implies a reduction in price provided to employees when food is supplied, emphasizing that the essence of such a concession rests upon the actual provision of food. The absence of this critical element in Tata Power's case led the court to assert that a mere cash allowance cannot be construed as the cash value of food concessions.

Distinguishing Features

The crux of the ruling rested on distinguishing between two scenarios:

1. **Tata Power's Case**: The lack of food supply rendered its food allowance ineligible for inclusion in dearness allowance, as there was no corresponding reduction in food costs.
2. **Current Case**: Contrastingly, the respondent industries in the present case were actively supplying subsidized meals in 12 canteens, providing a clear basis for the cash canteen subsidy to be seen as a concession. Here, employees had the option to consume food at significantly reduced rates, which established a tangible link to the concept of dearness allowance.

Legislative Intent

The court emphasized that the legislature intended to incorporate not only the direct cash allowances but also any food-related concessions in the broader definition of dearness allowance. By using a deeming fiction, the EPF Act considers the cash canteen subsidy as part of the dearness allowance, thus enabling deductions for provident fund contributions. This inclusion is vital for ensuring employees receive fair compensation, particularly in contexts of inflation and rising living costs.

Implications for Employees and Employers

This judgment holds significant implications for both employees and employers. For employees, it fortifies their entitlement to fair benefits and protects against potential exploitation through wage structures. For employers, it necessitates a reevaluation of their compensation frameworks to ensure compliance with statutory requirements and uphold the spirit of employee welfare.

The Gujarat High Court's ruling serves as a benchmark for future cases concerning employee benefits under the EPF Act. By affirming that cash canteen subsidies should be classified as dearness allowance, the court has reinforced its commitment to protecting workers' rights in a rapidly changing industrial landscape. Employers must take heed of this judgment, as it signals a robust legal framework aiming to safeguard the interests of employees, thereby fostering a more equitable work environment.

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PENAL DAMAGES

Mens rea is not an essential ingredient

S Sivashanmugam,
RPFC-I, Zonal Office, Guwahati

The recent judgement of the Hon'ble High court of Madras bench at Madurai in W.P.(MD)Nos.7339, 9688 of 2013, 2765 & 2782 of 2014 provides guiding light in the recovery of penal damages.

Section 14 B of EPF Act provides for recovery of penal damages and Paragraphs 32 A, 5 and 8A of EPF, EPS and EDLI respectively provides for sliding table for recovering the damages. Recovery of penal damages have been long contested issue in the hon'ble courts of law. Conflicting judgements have been pronounced by courts some saying that mens rea is an essential ingredient while levying damages and other judgements saying contra.

In Employees' State Insurance Corporation Vs HMT Ltd. And Another, AIR 2008 SC 1322 and in Assistant Provident Fund Commissioner EPFO and Another Vs Management of RSL Textiles India Private Limited 2017 (3) SCC 110 Hon'ble Supreme Court held that mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages.

The Hon'ble Supreme Court of India in Horticulture Experiment Station, Gonikoppal, Coorg Vs Regional Provident Fund Organisation, Civil Appeal No. 2136/2012 examined the issue of mensrea in Sec 14B proceedings. After considering previous judgements it held that mensrea or actus reus is not an essential element for imposing penalty/ damages for breach of civil obligations/liabilities.

The above judgement of the Hon'ble Supreme Court settled the question whether the intention of parties in delayed remittance of provident fund contribution is relevant while deciding the quantum of damages under Sec 14B of the Act.

However, CGIT Delhi in ATA No. D-2/19/2018 has applied the doctrine of per incuriam and stated that Horticulture judgement of hon'ble SC falls in to the category of per incuriam as the previous judgements discussed in the order have been passed by 3 judges' bench and Horticulture judgement has been passed by 2 judge's bench.

Per incuriam, literally translated as "through lack of care", refers to a judgment of a court which has been decided without reference to a statutory provision or earlier judgment which would have been relevant.

CGIT Delhi in its order stated that mens rea is an essential ingredient by relying Mcleod Russell and RSL Textiles India Pvt. Ltd judgements.

This order of CGIT have been used by the establishments to contest the recovery of damages. The same arguments were placed in the courts of law by the establishments.

In the recent judgement in W.P.(MD)Nos.7339, 9688 of 2013, 2765 & 2782 of 2014 , hon'ble High court of Madras at Madurai bench after deliberating on the issue of recovery of penal damages has framed wide guidelines encompassing the issue of penal damages. In Para no 39 (xi) held "*Though mens rea is not an essential ingredient*" …

The above sentence not only reiterates the stance of the organisation but also strengthens the stand. Now, mens rea cannot be cited by the establishment as usual. The authorities while passing order under section 14B have to keep the provisions of Act, Schemes and guidelines in mind to stand before the judicial scrutiny.

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Bombay High Court, Hon'ble Mr. R. M. Savant, J. Writ Petition Stamp No. 25074 of 2016, decided on 03.10.2016. The Central Board of Trustees, EPFO Vs M/s Shri Kutcchi Visha Oswal

Ram Anand
RPFC-I PDNASS

The Respondent had committed various default in making payment to the provident fund and pension fund within time as provided therein and accordingly, the EPF Authority had initiated 14B and 7Q inquiry through Show Cause Notice dated 20.01.2016 for the period 08/2012 to 04/2015. Separate orders were issued for inquiry u/s 14B and inquiry u/s 7Q. Respondent preferred an Appeal before EPFAT u/s 7I, specifically against the 14B order. The Hon'ble Tribunal vide order dated 17.05.2016 in ATA No. 576(9)2016 at Camp Court in Mumbai, granted interim relief against the order passed u/s 14B as well as order passed u/s 7Q, even though order passed u/s 7Q was not a subject matter of the appeal and appeal against the order passed u/s 7Q is not allowed u/s 7I of the Act.

The Petitioner issued recovery notice vide order dated 06.06.2016 in respect of order passed u/s 7Q of the Act. In response to the recovery order dated 06.06.2016, the bank made the payment towards the 7Q dues and immediately vide letter dated 14.06.2016, the recovery order dated 06.06.2016 was revoked. Vide order dated 14.06.2016, Presiding Officer directed the Petitioner to appear in person before the Tribunal on 20.09.2016 along with his explanation, why contempt proceedings should not be initiated against him for disobeying directions of the Tribunal. Further, the petitioner was directed to de-attach the bank account of appellant establishment immediately, failing which departmental inquiry was to be marked to the CPFC for violating Tribunal's order.

Accordingly, the Writ Petition Stamp No. 25074 of 2016 was preferred by the petitioner in the Hon'ble Bombay High Court on the grounds that Learned Presiding Officer exceeded his jurisdiction in providing relief against the 7Q order when the same was neither challenged nor any appeal is allowed against 7Q order u/s 7I of the Act. Further, reliance was placed on the Judgment of the Hon'ble Supreme Court of India in the Civil Appeal No. 9488 of 2013 (Arising out of SLP (C) No. 13410 of 2012) Arcot Textile Mills Ltd Vs The Regional Provident Fund Commissioners and Ors, which reads, " *...Be it noted, it was canvassed by the said Respondent before the High Court that an appeal would lie against an order passed under 7Q. On a scrutiny of Section 7I, we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under 7Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute…At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Section 7A and 7Q together. Such an order shall be amenable to appeal under Section 7I. The same is true of any composite order a facet of which is amenable to appeal and Section 7I of the Act. But, if for some reason when authority chooses to pass an independent order under Section 7Q the same is not appealable.*"

The Hon'ble High Court noted, "*In so far as Section 7-Q of the said Act is concerned, the same is not mentioned in Section 7-I of the said Act which provides for an Appeal. It is also well settled by the Judgment of the Apex Court that an Appeal does not lie against an order passed under Section 7-Q of the said Act…How the learned Presiding Officer could make a mention of the order passed under Section 7-Q of the said Act when there was not even a challenge to the said order in the Appeal, as the said order is not appealable, therefore begs an answer.*" Further, the Order dated 04.05.2016 and

17.05.2016, so far as it referred to the order passed under Section 7-Q was quashed and set aside. The Writ Petition was disposed, and Petitioner was allowed to proceed in accordance with law, in so far as non-compliance to the order passed under section 7Q was concerned.

Caution: It is prudent and advisable to prefer an appeal against an incorrect order rather than proceed with further course of action, ignoring the implications of the incorrect order.

What is Contempt of Court ?

Contempt of court refers to actions that disrespect the authority, justice, and dignity of the court. In India, contempt of court is governed by the Contempt of Courts Act, 1971.

Contempt of court is intended to ensure that the authority of the judiciary is respected and that the judicial process functions smoothly without undue interference.

The penalties for contempt of court can include:

- *Imprisonment for a term that may extend to six months.*
- *A fine that may extend to ₹2,000.*
- *Both imprisonment and fine.*

However, the court may discharge or remit the punishment if the accused tenders an apology to the satisfaction of the court.

Contempt of court is attracted under various circumstances, such as:

1. **Disobedience of Court Orders**: Willfully disobeying any judgment, decree, or order of the court.
2. **Scandalizing the Court**: Making statements or publications that scandalize or lower the authority of the court.
3. **Interference with Judicial Proceedings**: Any act that prejudices or interferes with the judicial process.
4. **Obstructing the Administration of Justice**: Actions that obstruct or tend to obstruct the process of justice.
5. **Breach of Undertakings**: Willfully breaching an undertaking given to the court.

There are certain defences available against contempt charges, such as:

- **Innocent Publication and Distribution**: Contempt is not attracted if the publication or distribution was made without knowledge of the pending proceedings.
- **Fair Criticism**: Fair and reasonable criticism of a judicial act in good faith does not constitute contempt.
- **Truth as a Defense**: In some cases, truth may be a defense if it is in the public interest and is pleaded as a defense.

EMPLOYER IS NOT RESPONSIBLE FOR BELATED CREDIT OF CONTRIBUTIONS BY THE STATE BANK OF INDIA – DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, GUNTUR ORDER DATED 24.01.2018 IN THE CONSUMER CASE NO.31 OF 2017 (M/s Sri Vijayalakshmi Electricals & Contractors Vs. Chief Manager, SBI, Chilakaluripet Branch).

K.V.V. NARASIMAHA SWAMY,
SR. SSA, LEGAL SECTION,
REGIONAL OFFICE, GUNTUR.

A Complaint had been filed by M/s Sri Vijayalakshmi Electricals & Contractors, Chilakaluripet having the EPF code No.GR/GNT/40459, under Section 12 of the Consumer Protection Act 1986, for passing award, by directing the Opposite Parties, "*to pay penal amount of Rs.1,12,586/- with interest @12% for the period from 04.12.2009 to 20.05.2012 and also to pay with further interest of 24% p.a. from 08.01.2014 to till realization and to pay compensation of Rs.20,000/- towards mental and physical suffering of the complainant besides Rs.8,000/- towards costs, to the Complainant.*"

BRIEF HISTORY OF THE CASE:

The Employees' Provident Fund Organisation, Regional Office, Guntur who was the Opposite Party No.2 in the Consumer case No.31/2017 is conferred with the authority to levy Penal Damages under the provisions of Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for the delay occurred in depositing the EPF contributions beyond the permissible time (beyond 15th day of the succeeding month). Accordingly, the Complainant was issued a Summons to present his case before the authority conducting the inquiry proceeding (i.e. the Opposite Party No.2) thereby affording with fair opportunity to the employer to defend the case. During the inquiry conducted under the provisions of Section 14-B of the said Act, the employer apprised the inquiry authority of the fact that the EPF contributions for the alleged period (for November, 2009 and January, 2010) had been deposited in time without any delay. The employer further alleged that the contributions for the period had been deposited in time, with State Bank of India, Chilakaluripet branch (herein Opposite Party No.1) and placed copies of challans before the Inquiry authority as the proof of remittance in time.

During the course of the said inquiry, it was considered prudent to verify the authenticity of the claim of the employer regarding timely deposit of the above said EPF contributions as there was no proof on records of receipt of such contributions in the Bank Accounts of the EPFO during the relevant time. As such, taking cognizance of the claim of EPFO regarding deposit of contributions, the State Bank of India was requested repeatedly to affirm and confirm the receipt of the contributions by the Bank and its credit to the Bank account of EPFO.

The State Bank of India never responded to the request of the EPFO until the employer filed this case before the Learned DCDRC, Guntur. The State Bank of India later only affirmed receipt of the contributions by the Bank in time, *while admitting delay of more than two years in depositing the same in to the Bank account of EPFO for which the Bank is liable to pay penal interest to EPFO for belated credit in terms of the agreement*. As per the agreement between the Employees' Provident Fund Organisation and the State Bank of India, the EPF contributions payable by the Employers of the establishments are collected by the Bank and it is the obligatory duty of the Bank to credit the contributions remitted by the establishments to the Bank Account of EPFO ***within five days*** .

The inquiry under Section 14-B of EPF Act 1952 was accordingly concluded with the findings that the employer had remitted the contributions for the alleged period with Opposite Party No.1 in form of valid negotiable instruments (Bank Drafts) in time. Accordingly, there was no liability of the employer towards the Penal Damages u/s 14-B for the alleged period. Hence, the Summons issued to the employer was treated as redundant for the alleged period (November, 2009 & January, 2010), vide Order dated 31.05.2017.

The State Bank of India (Opposite Party No.1) had issued a letter dated 04.07.2017 requesting the EPFO (Opposite Party No.2) to recover the delayed payment charges from the commission payable to the Bank. The EPFO issued a letter dated 07.07.2017 to the Bank to pay an interest of Rs.9,790/- and Rs.8,678/- on belated credits of two challans dated 04.12.2009 and 01.02.2010, as per the provisions of agreement made between Employees Provident Fund Organisation and the State Bank of India. The State Bank of India submitted a Demand Draft No.201923 dated 20.07.2017 for Rs.18,468/-.

FINDINGS OF THE COURT:

The Court observed that the Complainant has clearly established his case that the State Bank of India has committed deficiency of service and also observed that there is no proof of deficiency of service on the part of EPFO.

ORDER OF THE COURT:

In the result, the Complaint is allowed and the State Bank of India herein Opposite Party No.1 is directed to pay Rs.20,000/- towards mental and physical suffering of the Complainant and Rs.5,000/- towards costs of the litigation, to the Complainant. Further, the claim against EPFO herein Opposite Party No.2 is dismissed.

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Writ Petition No.8639 ©2024-M/s Apex Wellcare Pve Ltd Vs EPFAT & Others

Neeraj Srivastava
RPFC-I, Regional Office-Varanasi

This writ petition has been filed challenging an order dated 19.01.2024 passed by the Presiding Officer, Employees' Provident Fund Appellate Tribunal, Kanpur in Appeal No. 49 of 2023 granting stay of damages against the orders passed under Section 14B and 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act of 1952'), awarding damages and interest. By the said order, the Tribunal has admitted the appeal to hearing and granted interim stay of operation of the order dated 19.04.2024 passed under Section 14B and 7Q by the Regional Provident Fund Commissioner-II, Varanasi on condition that the petitioner do deposit a sum of Rs. 2,00,000/- each under Section 14B and 7Q of the Act of 1952. The Regional Provident Fund Commissioner-II, Varanasi has ordered the petitioner to pay a sum of Rs. 23,62676/- under Section 14B of the Act of 1952 and Rs. 11,63751/-under Section 7Q of the said Act.

Further, the Learned Counsel for the petitioner was urged before the Hon'ble CGIT-Kanpur that there is no requirement of pre-deposit in an appeal preferred under Section 7-I of the Act of 1952. The requirement of pre-deposit is there in a case, where the appeal under Section 7A is filed. He has drawn the attention of the Court in Writ-C No. 33257 of 2021, decided on 19.01.2022, wherein it has been held:

"What naturally flows from the above is that at present the Tribunal has erred in requiring the petitioner to pre-deposit the number of damages and interest. It is clear that no part of the damages may have been required to be pre-deposited to maintain the appeal filed by the petitioner. The maintainability of the appeal against interest demand is left open to be considered by the Tribunal, on its own reasoning."

Further, the perusal of the impugned order passed by the Appellate Tribunal does not show that the Tribunal have required the petitioner to pre-deposit any sum of money. The Tribunal have passed an interim order after admitting the appeal, subject to the condition that the petitioner deposits a certain sum of money as directed. It is only a conditional stay order.

Further, the Hon'ble High Court dismissed the said the said writ petition vide its order dated: -15.03.2024 with a view that, "the said order is absolutely interlocutory and there is no such perversity in the condition imposed as may require this Court to interfere with it in exercise of our jurisdiction under Article 226 of the Constitution".

Writ Petition No.8647/2024-M/s Patton Logistics Pvt Ltd, Varanasi Vs EPFAT & Others

This writ petition has been filed challenging an order dated 19.01.2024 passed by the Presiding Officer, Employees' Provident Fund Appellate Tribunal, Kanpur in Appeal No. 49 of 2023 granting stay of damages against the orders passed under Section 14B and 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, awarding damages and interest. By the said order, the Tribunal has admitted the appeal to hearing and granted interim stay of operation of the order dated: 19.04.2024 passed under Section 14B and 7Q by the Regional Provident Fund Commissioner-II, Varanasi on condition that the petitioner do deposit a sum of Rs. 3,00,000/- under Section 14B and a sum of Rs. 1,00,000/- under Section 7Q of the Act of 1952. The Regional Provident Fund Commissioner-II, Varanasi has ordered the petitioner to pay a sum of Rs. 10,01,517/- under Section 14B of the Act of 1952 and Rs. 5,54,805/- under Section 7Q of the said Act. Learned Counsel for the petitioner urged before the Tribunal that there is no requirement of pre-deposit in an appeal preferred under Section 7-I of the Act of 1952. The requirement of pre-deposit is there in a case, where the appeal under Section 7A is filed. He drawn the attention of the Court to the holding in Writ-C No. 33257 of 2021, decided on 19.01.2022, wherein it has been held:

"What naturally flows from the above is that at present the Tribunal has erred in requiring the petitioner to pre-deposit the amount of damages and interest. It is clear that no part of the damages may have been required to be pre-deposited to maintain the appeal filed by the petitioner. The maintainability of the appeal against interest demand is left open to be considered by the Tribunal, on its own reasoning." Upon hearing learned Counsel for the petitioner and learned Counsel appearing on behalf of respondent no. 2, this Court is afraid that the petitioner's contention cannot be accepted.

Further, the perusal of the impugned order passed by the Appellate Tribunal does not show that the Tribunal have required the petitioner to pre-deposit any sum of money. The Tribunal have passed an interim order after admitting the appeal, subject to the condition that the petitioner deposits a certain sum of money as directed. It is only a conditional stay order.

Further, the Hon'ble High Court dismissed the said the said writ petition vide its order dated: - 15.03.2024 with a view that, "the said order is absolutely interlocutory and there is no such perversity in the condition imposed as may require this Court to interfere with it in exercise of our jurisdiction under Article 226 of the Constitution".

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Do Penal Damages Hold the Same Status as EPF Contributions in Insolvency Claims?

Ritesh Pahwa,
RPFC- I, Regional Office, Vellore

The evolving judicial interpretation of the Insolvency and Bankruptcy Code, 2016 (the I & B Code) and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the EPF Act) has focused on the treatment of provident fund contributions and related dues.

The I & B Code categorically exempts "*all sums due to any workman or employee from the provident fund, pension fund, and gratuity fund*" from forming part of a corporate debtor's liquidation estate. This exclusion shields such sums from distribution under Section 53 of the Code. However, the treatment of different components of provident fund claims—specifically, the principal contributions, interest, and damages—under insolvency proceedings has repeatedly emerged for judicial scrutiny before various benches of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT).

Liquidators' Challenge to EPFO Claims in Insolvency

In recent insolvency proceedings, liquidators have raised a nuanced contention. They argue that the penal damages collected under Section 14-B of the EPF Act, which are not disbursed to employees but channelled into the EPFO's general funds, should not be considered as part of the excluded category of "*all sums due to any workman or employee from the provident fund*." Instead, they propose that these damages should be classified as "government dues" under the Code.

By reclassifying penal damages as government dues, liquidators assert that they should be distributed according to the waterfall mechanism prescribed in Section 53 of the I & B Code rather than being prioritised over other creditors. This argument hinges on the interpretation that penal damages—since they do not directly benefit the workers but serve as a deterrent against delayed contributions—do not fit within the protective clause intended to secure employee welfare.

For instance, in *Addanki Haresh, Liquidator of Right Engineers and Equipment India Private Limited v. Recovery Officer, EPFO* [IA No. 232/2022 in CP (IB) No. 320/2019], the NCLT Bengaluru Bench clarified that claims raised before the commencement of the moratorium do not form part of the liquidation estate and should be prioritised in payment. Conversely, any claims or penalties raised during the moratorium period are not allowable under the IBC provisions.

Further, the Bench addressed penal damages under Section 14-B of the EPF & MP Act, 1952. Penal damages, if claimed before the moratorium, are to be treated under the waterfall mechanism in Section 53 of the IBC, 2016.

Similarly, in *EPFO v. Enviro Bulk Handling Systems (P) Ltd*. [IA 2428/2021 in CP (IB)/1319(MB)/C-III/2017], the NCLT Mumbai Bench raised significant questions concerning the allocation of penal damages under the EPF Act. The Bench observed that, without clear evidence demonstrating that these damages are directly disbursed to employees, such sums may not warrant exemption from the liquidation estate.

Recent Judicial Pronouncements Prioritising EPF Dues, Including Penal Damages

The judiciary has recently adopted a progressive view regarding the treatment of penal damages under insolvency law, recognising that these amounts, while channelled through the EPFO, are ultimately intended to serve the welfare of employees by supporting the fund's stability and enabling higher rates of interest on employees' Provident Fund credits.

In *Jet Aircraft Maintenance Engineers Welfare Association vs Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd., and others* [(2022) ibclaw.in 861 NCLAT], the Principal Bench of the NCLAT undertook a comprehensive review of the treatment of EPF dues

within the framework of an insolvency resolution. The NCLAT clarified that the EPF dues, including any interest and damages imposed under the EPF Act, must be paid in full until the Insolvency Commencement Date. This obligation adheres to Sections 18 and 36 of the Code, underscoring that EPF contributions, accrued interest, and damages are exempt from forming part of the corporate debtor's assets available for distribution. The Supreme Court later affirmed this order of the NCLAT.

In its recent ruling in *Anuj Bajpai v. Employees' Provident Fund Organisation (EPFO)*, [Comp. App. (AT) (Ins) No. 1141 of 2023 & I.A. No. 3979 of 2023], the NCLAT, New Delhi, unequivocally held that all dues under the EPF Act—including interest and penal damages—are excluded from the liquidation estate of a corporate debtor, thereby prioritising them over other debts in insolvency proceedings. This landmark decision overturns prior conflicting views from various NCLT benches, affirming that even funds like interest and damages, which are not directly payable to employees, fall outside the distribution framework of the Insolvency and Bankruptcy Code (IBC).

To substantiate its position, the NCLAT referenced the Supreme Court's interpretation in *Maharashtra State Cooperative Bank vs. Provident Fund Commissioner [(2009) 10 SCC 123]*. There, the Supreme Court had expanded the interpretation of the phrase "*any amount due from an employer*" in Section 11(2) of the EPF Act, clarifying that it encompasses not only the principal contributions owed to the provident fund but also accrued interest and damages. This precedent was instrumental in the NCLAT's reasoning, reinforcing the priority of all EPF-related dues, beyond just the principal, under the protective purview of the Code.

The recent judicial interpretations reflect a strengthened commitment to safeguarding employee entitlements. They affirm that all EPF dues—including penal damages—must be prioritised in insolvency cases. By underscoring these protections, the judiciary ensures that the EPFO's foundational objective—securing employees' social security interests—remains integral within the insolvency framework.

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RECOVERY

Quasi-Judicial Powers of the Recovery Officer in EPFO

C. Ramesh,
Section Supervisor, RO, Vellore

The Recovery Officer in the Employees' Provident Fund Organisation (EPFO) holds significant quasi-judicial powers, especially in adjudicating disputes related to the attachment and recovery of dues. These powers, rooted in various legislative provisions, ensure an efficient and just recovery process. Understanding the scope and limitations of these powers is crucial for appreciating the judicial responsibilities carried by the Recovery Officer and their impact on both the recovery process and the rights of individuals.

Legislative History

The quasi-judicial authority of the Recovery Officer has evolved through several legislative amendments, reflecting the growing importance of effective enforcement mechanisms. In 1967, under the leadership of Justice P.B. Gajendragadkar, the National Commission on Labour recommended that the Provident Fund Commissioner be empowered to issue Recovery Certificates to District Collectors. This enabled the recovery of provident fund arrears like land revenue arrears through Revenue Recovery Certificates (RRC)[1].

Further refinement of these powers occurred with the 1988 Amendment Act, which revised Sections 8-B to 8-G of the EPF Act. These revisions authorised the Central Provident Fund Commissioner or other designated officer to execute these duties, with the provisions taking effect on July 1, 1990. The legislature adopted a method known as "*legislation by reference*," incorporating relevant sections from the Income Tax Act and Certificate Proceeding Rules into Section 8-G of the EPF Act. This consolidation resulted in a comprehensive code for the recovery of arrears under the Employees' Provident Fund & Miscellaneous Provisions Act, 1952.

Judicial Authority and Civil Court Powers of Recovery Officers

Rule 82 of the Second Schedule to the Income Tax Act, 1961 underscores the Recovery Officer's judicial powers. This rule deems every Recovery Officer or any officer acting under this schedule to be acting judicially as defined by the Judicial Officers' Protection Act, 1850. Rule 83 extends these powers by granting the Recovery Officer authority equivalent to that of a Civil Court when adjudicating disputes, including receiving evidence, administering oaths, enforcing witness attendance, and compelling the production of documents.

These judicial powers are important in managing disputes that arise during the recovery process. For instance, under Order XIII Rule 10 of the Code of Civil Procedure (CPC), a Recovery Officer can request documents from other courts, paralleling the powers of a Civil Court. Additionally, statements made by individuals compelled to attend proceedings, even if not under oath, carry significant weightage in the adjudication process.

Procedural Similarities Between Income Tax Rules and CPC

The procedural similarities between the actions of a Recovery Officer under the EPFO and the procedures outlined in the Civil Procedure Code, 1908, are striking. The rules in the Second Schedule of the Income Tax Act closely mirror those in Order 21 of the CPC, which governs the execution of decrees. Specifically, Rule 11 of the Second Schedule corresponds directly with various rules within Order 21 of the CPC, guiding the property attachment and adjudication process.

This alignment suggests that the interpretation of Rule 11 of the Second Schedule to the Income Tax Act should be consistent with how the corresponding CPC rules are understood. Such consistency ensures that the Recovery Officer's decisions are grounded in established legal principles, thereby maintaining uniformity in the application of law across different statutes.

Adjudication of Disputes Over Attached Properties

The adjudicative powers of the Recovery Officer are most evident in disputes over the ownership or attachment of properties during the recovery process. The Madras High Court, in the case of *Sankar Chemical Lime v. Assistant Provident Fund Commissioner and another* [W.P.(MD) No. 1513 of 2009, judgment dated 11th December 2011 (Mad. HC)], emphasised the limited discretion of courts in

interfering with the actions of the Recovery Officer. The court underscored that the EPF Act provides sufficient safeguards to prevent the wrongful attachment or sale of properties.

Section 66 of the Second Schedule to the Income Tax Act, 1961, allows the Recovery Officer to postpone the sale of attached properties if ownership or attachment is disputed, thus ensuring third-party rights are protected. The Recovery Officer is empowered to conduct thorough investigations and issue reasoned orders, similar to the procedures employed by Civil Courts under Order 21 Rule 58 of the CPC. For example, in *Jatin Estates (P) Ltd. v. Tax Recovery Officer* [(1975) ITR 343 (Cal.)], the court upheld the Recovery Officer's final authority in determining whether a specific property is exempt from attachment and subsequent sale under Section 60 of the Civil Procedure Code. This determination is conclusive, with no provision for review or appeal, underscoring the binding nature of the Recovery Officer's quasi-judicial role.

Recovery Officer's Jurisdiction and the Bar on Civil Court Intervention

The legislative framework delineates the Recovery Officer's powers under the Income Tax Act, particularly concerning the jurisdiction of civil courts. Section 293 of the Income Tax Act explicitly bars any suit from being brought in a civil court to set aside or modify any proceeding or order made under the Act. This provision underscores the legislature's intent to vest exclusive jurisdiction in the authorities under the Act, except in cases of alleged fraud directly attributable to an officer exercising power under the Act.

This exclusivity is further reinforced by Rule 9 of the Second Schedule to the Income Tax Act, which mandates that the Recovery Officer resolve disputes while executing recovery certificates. Consequently, civil courts are precluded from intervening, further affirming the Recovery Officer's comprehensive authority in recovery proceedings. This principle of barred civil court jurisdiction was affirmed by the Hon'ble High Court of Gauhati in *Employees' Provident Fund Organisation vs. Hotel Broadway* [2008 (III) LLJ Gau 36], where the court observed that civil court jurisdiction is implicitly barred in proceedings under the EPF Act, 1952.

Power to Arrest: Administrative Duty and Judicial Responsibility

Among the Recovery Officer's powers is the authority to arrest and detain defaulters in civil prison, a power that highlights the quasi-judicial nature of their role. Sections 8B to 8G of the EPF Act, 1952, outline these powers, which require adherence to due process, including issuing notices, conducting thorough inquiries, and ensuring compliance with the principles of natural justice.

It is important to note that a judgment debtor who is a woman enjoys statutory protection against arrest and detention in civil prison in the execution of a decree for money. This protection is enshrined under Section 56 of the Civil Procedure Code, 1908, which imposes an embargo on the arrest and detention of women in such cases. Consequently, even a notice to show cause under Order 21 Rule 37 of the CPC cannot be issued to a judgment debtor who is a woman.

While significant, the power to arrest and detain is not exercised arbitrarily; it involves a discretionary quasi-judicial inquiry, underscoring the Recovery Officer's responsibility to balance enforcement with fairness. Although administrative in some contexts, this power is inherently judicial when it impacts personal liberty and is subject to legal scrutiny.

Conclusion- The quasi-judicial powers vested in the Recovery Officer of the EPFO are central to enforcing dues under the Act. These powers, particularly in adjudicating disputes and exercising the authority to arrest and detain, reflect a blend of administrative duties and judicial responsibilities. The legal framework ensures that these powers are exercised with strict adherence to due process, safeguarding both the enforcement process and the rights of individuals.

1 The First National Commission on Labour (1969) recommended, "Power should be vested in the Provident Fund Commissioners and other offices of the Organisation to sanction prosecutions and issue certificates for the recovery of provident fund dues through the Collectors as arrears of land revenue."

INSOLVENCY

"PF Dues Cannot be Treated as Assets of the Corporate Debtor"

AMIT VASHIST
RPFC-I, EPFO PUNE

The recent judgement of the Supreme Court in Doddaballapur Spinning Mills Vs the RPFC[Civil Appeal No. 8762 of 2012] provides some guiding light in the current conundrum regarding moratorium on legal and expropriatory proceedings on companies undergoing corporate restructuring as a part of insolvency proceedings

The case unfolds in the backdrop of Sick Industrial Companies, (Special Provisions) Act, 1985 (SICA). The respondent was a company managing a textile mill which went into default of remittance of contributions payable under the Act. The jurisdictional RPFC initiated proceedings under Section 7A followed by consequential proceedings under sections 7Q and 14B, which culminated in determination of dues to the extent of Rs. 23,42,761/- against the respondent company.

The adjudication made by the RPFC was challenged before the Karnataka High Court which setit aside taking note of the provisions contained in Section 22(1) of the SICA. The High Court was of the view that Section 22(1) of SICA barred institution and continuation of legal proceedings on companies in respect of which proceedings under that Act were in continuation without consent of the BIFR. It held that the bar would also apply to the proceedings initiated under the EPF Act as well. Consequently, the action of the RPFC determining dues under Section 7A and connected provisions was held illegal.

The matter was contested by EPFO in Supreme Court with the principal submission that the bar for institution and continuation of legal proceedings in respect of a sick company registered applied to only those proceedings which were aimed at expropriation out of the properties of the company. It was argued that the provident fund dues and penalties did not constitute the company's properties and the bar to continue legal proceedings would not include proceedings initiated for recovery of workers' PF dues.

Agreeing with the submissions made by EPFO, Hon'ble Supreme Court observed that the proceedings for assessment of dues were initiated before the company was declared sick by the BIFR. Also, taking note of Section 11(2) of the EPF Act, which declares first charge of the EPF dues on the assets of a defaulting establishment, the Hon'ble Court held that the judgement of Karnataka High Court was unsustainable. The Court also observed that provident fund dues of the workers could not be treated as the assets of the defaulting company, therefore, the bar under Section 22(1) of the SICA would not operate in favour of the respondent company. The appeal was, therefore, allowed and the judgement of High Court was set aside.

The judgement is of immense legal and functional significance for two counts: firstly, it declares that the provident fund amounts in the hands of a company undergoing corporate restructuring are not its assets and secondly, the first charge on EPF dues would continue even in the stage of its reconstruction. The SICA, 1985 has now been repealed and the provisions of Insolvency and Bankruptcy Code, 2016 occupy that field now. One of the issues under contestation in the Corporate Insolvency Resolution Process (CIRP) today is whether provident fund contributions defaulted by a corporate debtor and continuing in his possession would be included in his assets in the CIRP. Its conclusive adjudication on this issue by the Supreme Court is yet to be made. The observation made by the Court that the provident fund dues cannot be treated as assets of the corporate debtor would be the foundation stone on which further matters may get decided.

EPF Dues and IBC Timelines The Commissioner and employees of the EPFO must ensure that they comply with the timelines prescribed under the Insolvency and Bankruptcy Code, 2016

PARITOSH KUMAR
RPFC-I, EPFO HEAD OFFICE

M/s Shree Siddhi Vinayak Ispat Pvt. Ltd. PF Code MH/101876 ('the establishment') had defaulted under the EPF & MP Act 1952. Corporate Insolvency Resolution Process (CIRP) was initiated against the establishment by an order dated 14/10/2019 and Shri Arun Kumar Gupta was appointed as Interim Resolution Professional by the Hon'ble NCLT Mumbai Bench.

The last date to file the claim with Insolvency Resolution Professional (IRP) was 12/12/2019. However, Regional Office Kolhapur could file the Provisional Claim for Rs.9,49,370/- only on 07/01/2021.

Later on, Shri Fanedra H. Munot was appointed as Interim Resolution Professional from 24.02.2020. Pursuant to this, RO Kolhapur filed revised Claim on 26.02.2021 for Rs 28,12,800/-(Final Claim) towards Provident Fund & allied dues as assessed U/s 7A of the Act, Interest U/s 7Q and damages U/s 14B of the EPF Act. On 30.08.2022, the IRP informed RO Kolhapur that Provident Fund claim has been rejected on the ground of being time barred.

Subsequently, RO Kolhapur filed an Interlocutory Application (IA) before NCLT on 02.11.22. However, registrar of NCLT assigned the registration number in the month of February 2023. Meanwhile, Resolution Plan was approved by Hon'ble NCLT on 23.12.2022 and IA filed by RO Kolhapur was rejected on 07.02.2023 on the ground that Resolution Plan is already sanctioned. It is to be noted that in the matter the CoC had approved the plan on 21.10.2020 only.

It was submitted by RO Kolhapur that the delay in assigning registration number to IA by Registrar of NCLT resulted in dismissal of IA without going into merits of the case. It is to be noted that Hon'ble NCLT has not taken the cognizance of PF Claim despite filing of I.A. before the approval of Resolution Plan.

Therefore, to protect the interest of the PF members, RO Kolhapur decided to proceed further for filing the appeal in NCLAT, New Delhi against the NCLT order dt. 07.02.2023.

Hon'ble NCLAT, Delhi Bench vide its order dated 25.04.23 dismissed the appeal filed by RO Kolhapur stating that *"We do not find any error in the order passed by Adjudicating Authority on 07.02.23 rejecting the application of appellant[RO Kolhapur] relying on the Judgment of Hon'ble Supreme Court in Ghanshyam Mishra & Sons Vs Edelweiss Asset Reconstruction we do not find any error in the order the appeal is dismissed".*

Appeal before Hon'ble Supreme Court:-

Against the order dated 25.04.2023 of Hon'ble NCLAT Delhi, an appeal was filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the appeal of EPFO and ordered as under:

> *".....we are of the view that the Commissioner and employees of the EPFO must take steps to ensure that there is compliance with the timelines provided under the Insolvency and Bankruptcy Code, 20162. Failure may have legal consequences.*
>
> *The employees of the EPFO must be aware of the consequences in order to ensure compliance. In case there is dereliction of duty, action should be taken against erring employees in accordance with law.*
>
> *Having said so, we are of the opinion that the impugned judgment does not, in any way, affect the rights of the EPFO to proceed in accordance with law, in view of Section 36(4)(a) (iii) of the IBC.*

Recording the aforesaid, we do not find any good ground and reason to interfere with the conclusion(s) reached in the impugned judgment and hence, not inclined to issue notice."

In view of the above, it may be concluded that the legal position under Section 36(4) (a) (iii) of the IBC is intact subject to adherence to the timelines prescribed under the IBC 2016.

(EPFO vs. FanendraHarakchand Munot & Anr., Civil Appeal No 5423/2023, Supreme Court)

CBT Vs Shri. Kumar Rajan, Resolution Professional & Ors. NCLAT, Chennai Bench [2023 SCC Online NCLAT 284]

(Share of workmen dues shall be kept outside the Liquidation assets)

PARITOSH KUMAR,
RPFC EPFO HEAD OFFICE

In this case, the Insolvency Resolution Professional sent an email dated 09/02/2021 informing EPFO that they are entitled to only 35.13% of the admitted claim of Rs. 30.46,31,880/- as per plan approved by NCLT, Kochi. The RP had classified EPFO's dues as Operational Creditors without approving the Notice of the Adjudicating Authority based on the ratio laid down by NCLAT in the 'Jet Aircraft Maintenance Engineers Welfare Association Vs Ashish Chhawchharia, & Ors. C.A. (AT) (CH) (Ins) No. 752/2021 which relied upon the Apex Court Judgment in the matter of 'Sunil Kumar Jain vs Sundaresh Bhatt, reported in Civil Appeal No. 407/2023, dated 30/01/2023. It was submitted by EPFO that the EPFO's dues have to be paid in priority to all other claims and that even in Liquidation Proceedings, the EPFO's dues are outside the waterfall mechanism provided under Section 53 of the Code.

However, the IRP intimated that EPFO is entitled to only 35.13% of the total admitted claim of Rs. 30,46,31,880/- (Rupees Thirty Crore Forty Six Lakhs Thirty One Thousand Eight Hundred and Eighty Only). An appeal was preferred before NCLAT, Chennai against the order of NCLT, Kochi. Hon'ble NCLAT Chennai, in this matter, relied upon the judgment in 'Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd. & Ors. reported in ((2022) SCC OnLine NCLAT 418] dated 21/10/2022 wherein a clear direction was given to the 'Successful RP to make payment of the admitted Claims towards Provident Fund dues and the same was upheld by the Hon'ble Apex Court in Civil Appeal No. 407/2023, dated 30/01/2023.

The Hon'ble Apex Court has laid down, that the share of workmen dues shall be kept outside the 'Liquidation assets and the concerned workmen/ Employees shall have to be paid the same, out of such Provident fund, Gratuity Fund, if any available. The words, if any available, cannot be read to mean that the workmen and empolyees are not entitled for Provident fund, Gratuity Fund, Pension fund, if not available with the Liquidator Further, Hon'ble Court also went through the provisions of Section 36(4)(c) (iii) of IBC 2016, Section 11 of the EPF & MP Act 1952 and also discussed the judgment of Hon'ble Supreme Court in "Maharashtra State Cooperative Bank Limited vs APFC & Ors (2009) 10 SCC 123." Keeping in view, the afore noted principles, Hon'ble NCLAT Chennai had allowed the instant Company Appeal (AT) (CH) (Ins) No. 268/2021 with a direction to include these admitted amounts in the 'Resolution Plan'.

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CIVIL APPEAL NO. 1661 OF 2020 SANJAY KUMAR AGARWAL vs STATE TAX OFFICER (1) & ANR

Navendu Rai
Regional P.F. Commissioner-I (Legal) EPF HQ

The Supreme Court dismissed a batch of five review petitions against a common order dated 06.09.2022. The order had set aside the resolution plan approved by the Committee of Creditors (CoC) of Rainbow Papers Limited, a corporate debtor undergoing insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC). The order had also held that the State Tax Officer, who had claimed dues under the Gujarat Value Added Tax Act, 2003 (GVAT Act), was a secured creditor and had priority over other creditors. The court also held that the timelines prescribed under the IBC was not mandatory, but only directory.

The 2022 judgment held that the definition of a secured creditor under the IBC included any government or governmental authority and that a resolution plan which ignored statutory dues was liable to be rejected. The Supreme Court held that the Committee of Creditors cannot secure their own dues at the cost of statutory dues owed to any government or governmental authority.

The petitioners who sought review of Rainbow Papers relied on the observations made by a coordinate bench in Paschim Anchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited and Others (2023) to the effect that Rainbow Papers did not notice the 'waterfall mechanism' in Section 53 of IBC.

The review bench did not accept this argument and said that any passing reference of the impugned judgment by a bench of equal strength could not be a ground for review. The Supreme Court held that a co-ordinate bench cannot comment upon or overrule the judgment of another co-ordinate bench of equal strength, and the only proper course is to refer the matter to a larger bench for authoritative decision.

Hon'ble Supreme Court referred to various precedents and summarised the key principles to pre-empt review petitions from becoming "appeals in disguise".

i. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.
ii. A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.
iii. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.
iv. In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."
v. A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."
vi. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.
vii. An error on the face of record must be such an error which, mere looking at the record should strike, and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.
viii. Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

The Supreme Court judgment has implications for the resolution of insolvency cases under the IBC, as it affirms the status of the government as a secured creditor and the importance of paying the statutory dues in any resolution plan. The judgment also clarifies the scope and ambit of review under the IBC.

Payment of PF dues in full by Successful Resolution Applicant: Hon'ble NCLAT order in Sikander Singh Jamuwal v. Vinay Talwar Resolution Professional and Others [Company Appeal (AT) (Ins)No. 483 of 2019]- An analysis

Arjun Thukral,
Regional P.F. Commissioner-II
Regional Office Hyderabad

Every fresh legislation brings with it a set of fresh debates about the certain ongoing issues which the judicial system of the nation decides on and gives the legislation an external support structure of jurisprudence. In regards to payment of PF dues, an issue was raised before the Hon'ble NCLAT, Principal bench, New Delhi by the workmen(herein after referred to as "Appellant") of the establishment- M/s Applied Electromagnetics Pvt. Ltd.(herein after referred to as "Corporate Debtor")- being aggrieved by the discriminatory resolution plan presented by the Resolution Professional(RP) and approved by NCLT, Delhi which led to lesser payment to workmen dues(including PF and gratuity) as compared to financial creditors.

The arguments raised by the appellants are centered on grounds of inequality and violation of the rights of workmen in the resolution where the PF dues were not paid in full. Whereas, the respondent RP has contended that the resolution plan was duly considered and approved by the adjudicating authority that is NCLT and there is no infirmity in the same.

The respondents stressed on the 'Commercial Wisdom of the Committee of Creditors(CoC)' by citing the judgments of the Apex Court, among others, in Essar Steel India Limited Vs Satish Kumar Gupta where the Apex court held that the decision of the adjudicating authority- NCLT should be limited to verifying if the resolution plan filed by the RP as endorsed by CoC has considered the best use of assets and that interest of all creditors have been taken care of. NCLT however cannot interfere with the merits of commercial wisdom of the CoC. That is to say, if the CoC has recommended hair cut in payment of workmen dues including PF dues, the same should not be questioned on that ground only.

Hon'ble NCLAT, after considering the arguments extended by the parties and the provisions of IBC, 2016, and EPF and MP Act, 1952, ordered that the RP and the endorsement of CoC(approved by NCLT, Delhi) has failed to consider the payment of PF dues as computed by APFC vide its order and provision for payment in full has not been made. After carefully analysing the rival contentions, the Hon'ble NCLAT determined that the resolution plan does not

satisfy the principle laid in Section 30(2)(e) where it has to be ensured that the resolution plan does not contravene any provisions of the law for the time being in force. It was held that resolution plan is in violation of Section 17B of the EPF & MP Act, 1952 which fastens the liability in case of transfer of establishment on the transferee.

It was observed by the Appellate Tribunal that the compliance of laws cannot be a casualty in the decision made by the CoC in their commercial wisdom and such commercial wisdom cannot override the application and compliance of laws in force. In effect the Appellate Tribunal, while observing that no provision of EPF and MP Act is contradictory to IBC and it is made clear by the Section 36(4)(a)(iii) of IBC that PF dues are not assets of Corporate Debtor, directed the Successful Resolution Applicant to pay the balance of PF dues in full(Total PF dues (minus) PF dues admitted in resolution plan) to EPFO.

To summarize, the principle laid down in the above case is that, i) Compliance of laws cannot be made subject to the commercial wisdom of CoC, ii) There is no contradiction between EPF Act and IBC, and iii) Section 17B is applicable in case of successful resolution and Successful Resolution Applicant is responsible for payment of PF dues in full.

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Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia RP of Jet Airways (India) Ltd. & Ors. (NCLAT, Mumbai)

Sh. Asim Chabra,
Regional P.F. Commissioner-II
Regional Office Salem

This judgement arose out of appeals against the approval of resolution plan by NCLT, Mumbai against Corporate Debtor Jet Airways(India) Ltd. The questions addressed by Appellate Tribunal are :

i) Whether the workmen and employees are entitled to receive the payment of provident fund, gratuity and other retirement benefits in full since they are not part of the liquidation estate under Section 36(4)(b)(iii) of the Code?

NCLAT has relied upon the three member bench judgments in State Bank of India vs Moser Baer Karamchari Union and Another and Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd. In both cases, tribunal has categorically held that provident fund has to be paid to workmen and employees in full and that cannot be made subject to distribution under waterfall mechanism of Section 53(1). The judgment of "State Bank of India vs. Moser Baer Karamchari Union was a case relating to liquidation proceeding, where relying on Section 36(4)(a)(iii) the Adjudicating Authority has directed the Liquidator to make the payment of provident fund, pension fund and gratuity fund. Whereas, in Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd. directions were issued to the successful resolution applicant to release full provident fund and interest thereof in terms the Employees' Provident Funds and Miscellaneous Provision Act, 1952. The said judgment has also received approval by the Hon'ble Supreme Court, wherein it has been upheld that the workmen and employees are entitled for payment of full amount of provident fund and gratuity till the date of commencement of the insolvency, which amount is to be paid by the successful resolution applicant consequent to approval of the resolution plan. Successful resolution applicant is obliged to make payment of balance unpaid amount of provident fund and gratuity to workmen and employees.

Tribunal also holds the view that when no provident fund, gratuity fund and fund for leave encashment is maintained by the corporate debtor and such claim has been filed before resolution professional and admitted by resolution professional, have to be satisfied as per the provisions of the Code and as per Section 30, subsection (2) read with Section 53(1) of the Code.

Thus, in view of the above judgements the tribunal upheld the entitlement of the workmen and employees to receive the amount of provident fund and gratuity in full since they are not part of the liquidation estate under Section 36(4)(b)(iii). Non-payment of full provident fund and gratuity shall lead to violation of Section 30(2)(e), hence, to save the plan the above payments have to be made. ii) Whether the claim of Regional Provident Fund Commissioner verified to the extent of Rs.24,40,65,594/- arising out of an order dated 17.10.2018 passed under Section 14B of Employees' Provident Funds & Miscellaneous Provisions Act 1952 can be treated as secured debt and the Appellant was entitled to receive the amount as secured creditors?

The RPFC was treated as Operational Creditor by the Resolution Professional, hence, the RPFC was allocated a fixed amount of Rs.15,000/- which was allocated to all Operational Creditors except the workmen.

RPFC challenged the Resolution Plan on the ground that Section 11 of the 1952 Act requires priority over all other dues and further Section 36(4)(a)(iii) excludes provident fund dues from the liquidation estate of the Corporate Debtor.

NCLAT has upheld that the Section 11 of the 1952 Act provides for priority of payment of contributions over other debts. NCLAT also appreciated that as per provision of Section 36(4)(a)(iii) of the Code the provident fund dues are not subject to distribution under Section 53(1) of the Code, for which it again relied upon three member bench judgment of the Tribunal in "Tourism Finance Corporation of India Ltd. vs. Rainbow Papers Ltd. & Ors."

Moreover, taking cognisance of the view of Hon'ble Supreme Court in the case of "Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner & Others", wherein it has been upheld that "any amount due from an employer" appearing in sub-section (2) of Section 11 also covers the amount determined under Section 14B.

Thus, it was upheld that the claim of RPFC was to be satisfied in full, otherwise breach of provision of Section 30(2)(e) would have occurred. Thereby directions were issued to the successful Resolution Applicant to make payment of the admitted claim of the RPFC towards provident fund dues to save the plan from invalidity. Thus, negating the stand taken by Resolution professional of declaring RPFC as Operational Creditor only for the reason that the claim was filed in FormB.

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W.P. No. 18328 of 2022, Radhakrishnan Dharmarajan, Liquidator v. Central Board of Trustees, EPF, High Court of Judicature at Madras

Abhishek Bisht
ASO (Legal)
EPF HQ

The case pertains to the liquidation of M/s. Flora Footwear Pvt. Ltd., as directed by the National Company Law Tribunal (NCLT). Subsequently, an electronic auction of the company's significant assets took place, and the successful bidder was granted a sale certificate. The Employees' Provident Fund Organisation (EPFO) filed a claim for provident fund dues, covering principal, administration charges, interest, and damages.

The Liquidator, recognizing the financial constraints due to the company's liquidation and the shortfall in auction proceeds, paid the principal and administration charges. However, the Liquidator sought leniency regarding the damages, citing the company's insolvency. The request was referred to the Central Board of Trustees, EPF, which denied the waiver based on outdated criteria related to the erstwhile Sick Industrial Companies (Special Provisions) Act, 1985, and the Board for Industrial and Financial Reconstruction (BIFR).

Legal Analysis: The High Court, while acknowledging the discretionary authority of the Central Board of Trustees, EPF, in matters of waiver, criticized the rationale behind their decision as obsolete. The court noted the need for updating Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, recognizing its misalignment with contemporary legal frameworks, such as the Insolvency and Bankruptcy Code, 2016 (I&B Code).

Despite refraining from usurping the Board's discretionary role, the court emphasized the invalidity of the reasons given for denial, pointing out the dissolution of BIFR and the enactment of the I&B Code. Consequently, the court quashed the impugned order and directed a reconsideration by the Central Board of Trustees, EPF.

Judicial Pronouncement: In its final decree, the court granted success to the writ petition without imposing any costs. It censured the Central Board of Trustees, EPF, for its deficient reasoning and mandated a fresh evaluation of the matter. The court underscored a dual imperative – adherence to the I&B Code's tenets and the statutory authority vested in the Board to exercise discretion in matters of damages waiver, as stipulated in Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act.

In summation, the court's judgment nullified the impugned order dated March 23, 2022, issued by the Employees' Provident Fund Organisation, Zonal Office, Chennai, and directed a renewed and enlightened consideration by the Central Board of Trustees, EPF, in consonance with contemporary legal paradigms.

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Navigating Legal Complexities: EPFO's Challenges in Insolvency Cases [Civil Appeal No 7661 of 2023, EPFO vs Vandana Garg & Ors.]

Paritosh Kumar,
RPFC-I, Legal
EPF HQ

In recent cases before Hon'ble Supreme Court, the Employees' Provident Fund Organization (EPFO) encountered intricate challenges in pursuing its claims during Corporate Insolvency Resolution Processes (CIRP). Two notable cases, Foodco Delicacies India Pvt Ltd. and Vandana Garg matter, have been highlighted. In these matters the Hon'ble Supreme Court vide single order dated 03.01.2024 rejected the appeal filed by EPFO on the ground of delay in approaching NCLAT.

Vandana Garg Matter Overview: The case involves the Regional Office Raipur assessing significant dues against M/s Jyoti Structure Ltd. during its CIRP. Despite filing claims and the approval of the Resolution Plan, the EPFO faced rejection and subsequent legal hurdles, leading to a dismissal by the Supreme Court on grounds of delay.

Brief facts of the case:-

1. On August 30, 2018, the Assistant Provident Fund Commissioner, Regional Office Raipur, assessed dues totaling Rs. 63,67,456 for the period of January 2017 to December 2017 against the establishment M/s Jyoti Structure Ltd. (CG/RAI18007). Subsequently, on August 31, 2018, dues amounting to Rs. 60,38,188 for the period of December 2015 to December 2016 were assessed against the same establishment. As the establishment was undergoing Corporate Insolvency Resolution Process (CIRP), the Regional Office Raipur filed its claim on January 7, 2019, in Form-B before the Resolution Professional though the last date of filing claim was 26.07.2017

2. On March 27, 2019, the Hon'ble Tribunal approved the Resolution Plan for m/s Jyoti Structure Ltd., but it did not account for the dues claimed by the Regional Office Raipur. RO Raipur again took up the matter with IRP but on September 30, 2019, the IRP rejected the claim, citing a delay in submission.

3. In response to the rejection of the claim by the Resolution Professional, the Regional Office Raipur filed IA no. 1283/2023 before the Hon'ble NCLT, Bench-Mumbai, on March 30, 2023, seeking directions to accept their claim. There was a huge delay in filing Interlocutory Application. The I.A. was rejected by the NCLT Mumbai on April 10, 2023, on the grounds that the Resolution Plan had already been approved, following the precedent set by the Hon'ble Supreme Court in the case of Ghanshyam Mishra & Ors. Vs Edelweiss Asset Reconstruction Company [Civil Appeal 8129/2019).

4. Thereafter an appeal against the NCLT Mumbai order was filed before the Hon'ble NCLAT Delhi on May 26, 2023, through IA No. 1283/2023. Again there was a delay in filing appeal.

5. The Hon'ble NCLAT Delhi, in its order dated July 28, 2023, rejected the appeal filed by the Regional Office, citing delay in filing. The rejection was based on the interpretation of Section 61(2) of the Insolvency and Bankruptcy Code (IBC), 2016, and the applicability of the judgment in the case of V. Nagarajan Vs. SKS Ispat and Power Ltd. (Civil Appeal No. 3327 of 2020). The NCLAT held that the delay could not be condoned as it exceeded the statutory limitation.

6. A SLP was filed before the Hon'ble Supreme Court against the order passed by the Hon'ble NCLAT.

7. The Hon'ble Supreme Court vide order dated 03.01.2023 dismissed the SLP and declined to issue notice as there was a delay in filing an appeal before the Ld. NCLAT. It was observed that the NCLAT did not have the power to condone the delay beyond 15 days (for appeals before Ld. NCLAT).

Foodco Matter Overview: M/s Foodco Delicacies India Pvt Ltd., under the jurisdiction of RPFC-I, RO, Kochi, faced similar challenges. The EPFO's initial claim, subsequent assessment of additional dues, and attempts to recover outstanding amounts faced setbacks at both the NCLT and NCLAT levels, ultimately leading to a dismissal by the Supreme Court.

Brief facts in Foodco matter:

1) M/s Foodco Delicacies India Pvt Ltd., is covered under the jurisdiction of the RPFC-l, RO, Kochi under EPF Code No. KR/KCH/24464. The establishment was under CIRP and a claim by the EPFO for an amount of Rs. 16,32,134 was preferred before Resolution Professional on 18-04-2022 as the establishment was in default from 12/2014. Later, a letter dated 16-06-2022, intimating that the amount was admitted, had been received from Resolution Professional.

2) In the meantime, a further dues of Rs. 9,02,937 was arrived at vide 7A enquiry (Order u/s 7A dated 23-08-2022) and the total dues including 14B damages & 7Q interest stood to Rs. 32,72,553. Out of this amount, Rs 16,32,134 towards assessment under Section 7A, 7Q and 14B of the EPF & MP Act for the period 12/2014 to 12/2019 and Rs 16,40,419 towards assessment under Section 7A, 7Q and 14B for the period 01/2020 to 03/2022. It is later confirmed that Rs 16,32,134 has been received by RPFC I, Kochi on 12-05-2023.

3) An application No. IA(IBC)/479/KOB/2022 in CP(IB)/08/KOB/2021 was fled before NCLT, Kochi, to realize Rs 32,72,553 which was outstanding at that time. However, NCLT Kochi dismissed the application vide order dated 16-03-2023 holding that the Resolution Plan has been already approved by the Committee of Creditors and also the initial claim of Rs. 16,32,134 has been already accepted. Further the 7A Order dated 23-08-2022 for assessment of dues for the period 01/2020 to 03/2022, for Rs 9,02,937 was declared as void, as NCLT Kochi held that the order was violation of Section 14 (Moratorium) of IBC 2016.

4) RO, Kochi, subsequently challenged order dated 16.03.2023 of NCLT Kochi before NCLAT, Chennai though the limitation period was already over.

5) The Company Appeal(AT)(CH)(Ins)No.306/2023 filed by the Office challenging the NCLT Kochi order dated 16.03.2023 was dismissed as barred by time barred by the Hon'ble NCLAT, Chennai vide order dated 22.09.2023.

6) A civil appeal was filed before the Hon'ble Supreme Court against the order dated 22.09.2023 passed by the Hon'ble NCLAT.

7) The Hon'ble Supreme Court vide order dated 03.01.2023 dismissed the civil appeal and declined to issue notice as there was a delay in filing an appeal before the Ld. NCLAT. It was observed that the NCLAT did not have the power to condone the delay beyond 15 days (for appeals before Ld. NCLAT).

<u>Key Legal Challenges faced by EPFO:</u>

Timely filing of appeals: In both cases, delays in filing appeal before NCLT, and NCLAT became pivotal factors in their dismissal before Hon'ble Supreme Court.

Resolution Plan Precedence: The approval of Resolution Plans by the Committee of Creditors became a crucial factor in dismissing EPFO claims. Courts emphasized the sanctity of approved plans, impacting the recoverability of provident fund dues.

Interpretation of Statutory Limitation: The interpretation of statutory limitation periods, as evident in the NCLAT's reliance on Section 61(2) of the Insolvency and Bankruptcy Code (IBC), played a decisive role in both cases.

In view of the above, the field offices of EPFO may take a note of the above cases. It is evident that the NCLT/NCLAT are neither inclined nor have the power to condone delay in filing appeals before them under IBC. Therefore, the timelines prescribed in the SOP issued by Compliance Division, EPF HQ shall be strictly complied with in order to protect the interest of EPF subscribers and the department.

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Seemab Qayyum v Union Of India W.P.(C) No. 1427/2023 PIL-W "Supreme Court Dismisses Plea Urging Centre to Notify Part 3 of Insolvency & Bankruptcy Code"

Sukhman Singh,
ASO Legal
EPF HQ

The Supreme Court, on January 23, 2024, dismissed a plea seeking a mandamus to compel the Union Government to notify Part 3 of the Insolvency and Bankruptcy Code (IBC) 2016. The plea focused on enforcing provisions related to bankruptcy for individuals and partnership firms.

The apex court, based its decision on the precedent set in the AK Roy v. Union of India case reiterated its earlier stance, highlighted that a writ of mandamus under Article 32 cannot be issued to the Central Government for enforcing specific sections, even with presidential assent.

Part 3 of the IBC, encompassing sections 79 to 187, addresses crucial provisions related to insolvency resolution and bankruptcy for individuals and partnership firms. The plea's dismissal underscores the court's commitment to the separation of powers, emphasizing that it cannot direct the government to notify legislation already passed by the Parliament.

The Insolvency and Bankruptcy Code, introduced in December 2015 and subsequently passed on May 5, 2016, serves as a comprehensive legal framework for addressing insolvency and bankruptcy matters. The court's decision reflects a nuanced approach to the judiciary's role in overseeing legislative implementation while respecting the autonomy of the legislative branch.

The case, titled Seemab Qayyum v. Union of India (W.P.(C) No. 1427/2023 PIL-W), marks a significant legal precedent reaffirming the limits of judicial intervention in matters of legislative implementation.

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WP(C) No. 39185 of 2022 titled as Kerala State GST Department v. National Company Law Tribunal and Anr before Kerala High Court (Judicial Review of NCLT's Power)

Manish Kumar Thakur
RPFC-I (Legal)
EPF HQ

Introduction:

In a recent ruling that has significant ramifications for the insolvency landscape in India, the Kerala High Court delivered a judgment in the case of Kerala State GST Department v. National Company Law Tribunal. The case revolved around the powers of the National Company Law Tribunal (NCLT) in relation to assessment orders issued during the moratorium period under the Insolvency and Bankruptcy Code (IBC). This article delves into the key aspects of the case and its implications for corporate debtors, creditors, and the judicial interpretation of the IBC.

Background:

The case centered on M/s Albanna Engineering (India) Pvt. Ltd., a Corporate Debtor admitted into Corporate Insolvency Resolution Process (CIRP) in 2019. During the moratorium period, the Kerala State GST Department issued an assessment order against the Corporate Debtor, determining a substantial tax liability. The Corporate Debtor, through the NCLT, sought permission to appeal against the assessment order, which was granted, but the NCLT went further to declare the assessment order as void ab initio.

Key Issues and Analysis:

The pivotal issue before the Kerala High Court was twofold:

1. Whether the NCLT had the authority to declare an assessment order as *void ab initio*,
2. The extent of the tribunal's powers during the moratorium period under the IBC.

The Court meticulously analyzed the relevant provisions of the IBC, particularly Section 14, which imposes a moratorium on proceedings against the Corporate Debtor. It underscored the intent behind the moratorium, emphasizing its purpose to shield the assets of the Corporate Debtor and facilitate an orderly resolution process. The Court also highlighted the Supreme Court's interpretation of the IBC in the Sundaresh Bhatt case, which affirmed the overriding effect of the IBC on other laws and the limitations it imposes on authorities during the moratorium.

The Court unequivocally held that the NCLT exceeded its jurisdiction in declaring the assessment order as *void ab initio*. It emphasized that the NCLT's role is not akin to that of a Constitutional Court and that such a declaration was beyond its purview under the IBC. Furthermore, the Court reaffirmed the authority of the Interim Resolution Professional or Liquidator to challenge the legality of assessment orders before the appropriate authorities.

Conclusion:

The Kerala High Court's ruling in Kerala State GST Department v. National Company Law Tribunal sets a significant precedent clarifying the powers of the NCLT and affirming the sanctity of the moratorium under the IBC. It underscores the importance of adhering to the statutory framework while addressing issues arising during insolvency proceedings. The judgment provides much-needed clarity and guidance for stakeholders involved in the insolvency resolution process and reaffirms the judiciary's role in upholding the integrity of the law.

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IA(IBC)/1020(CHE)/2023 in CP/1021/IB /2018 titled as RPFC Vs M/s. Supreme Coated Paper Board Private Limited before NCLT Chennai (Clarification on Partial Rejection of Claims in Insolvency Proceedings)

Sukhman Singh
ASO (Legal)
EPF HQ

In the realm of insolvency proceedings governed by the Insolvency and Bankruptcy Code, 2016, the treatment of claims filed by creditors holds paramount importance. Recent legal developments have shed light on the nuances surrounding the acceptance or rejection of claims, particularly when partial rejection occurs. This article delves into a recent case, providing insights into the legal framework, precedents, and implications of such scenarios.

Case Overview:

The case under review pertains to the application (IA/IBC/1020/CHE/2023) filed under Section 42 and 60(5) of the Insolvency and Bankruptcy Code, 2016. The applicant sought relief against the partial rejection of their claim amounting to Rs. 3,98,92,397 by the liquidator appointed during the insolvency proceedings of Supreme Coated Board Private Limited.

Key Legal Arguments:

The crux of the dispute revolved around the liquidator's partial rejection of the claim, citing discrepancies in documentation and calculation basis. The applicant contended that their claim was supported by comprehensive documentation and that the respondent's participation in earlier proceedings implied acceptance of the claimed amount.

Legal Precedent:

The tribunal's decision drew heavily upon legal precedent, notably citing the Supreme Court's ruling in Maharashtra State Cooperative Bank Limited vs. Provident Fund Commissioner (2009) 10 SCC 123. This landmark judgment emphasized the inclusion of penal damages and interest levied by PF authorities as part of the "amount due" under Section 11(2) of the EPF & Miscellaneous Act, 1952.

Implications and Interpretation:

The tribunal's ruling sets a significant precedent, clarifying the treatment of claims in insolvency proceedings. It underscores the obligation of liquidators to consider all aspects of a claim diligently, especially when previous assessments or legal precedents support the claimed amount. Furthermore, it highlights the importance of adherence to statutory provisions and procedural fairness in insolvency proceedings.

Conclusion:

The case discussed underscores the complexities involved in the acceptance or rejection of claims during insolvency proceedings. Legal clarity and adherence to established precedents are vital to ensure fairness and transparency in the resolution process. Moving forward, stakeholders must navigate these intricacies diligently, guided by established legal principles and precedents, to uphold the integrity of insolvency proceedings and safeguard the interests of all parties involved.

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CIVIL APPEAL NOS.7590-7591 OF 2023 titled as Greater Noida Industrial Development Authority Vs Prabhjit Singh Soni & Anr Before the Hon'ble Supreme Court

Abhishek Bisht
ASO (Legal)
EPF HQ

The case originated with the appellant, a statutory authority under the U.P. Industrial Area Development Act, 1976, acquiring land for an urban and industrial township. One plot of land, Plot No. 01-C, Sector 16C, Greater Noida, was allotted to M/s. JNC Construction (P) Ltd. (the Corporate Debtor) for a residential project. The Corporate Debtor defaulted on payment, leading to a Company Petition for initiating Corporate Insolvency Resolution Process (CIRP), which was admitted on 30.05.2019. Claims were invited, and the appellant submitted a claim of Rs. 43,40,31,951, as unpaid instalments for the lease premium.

However, the Resolution Professional (RP) treated the appellant as an operational creditor, requesting submission of claim in Form B. The appellant did not comply. Meanwhile, a resolution plan was approved by the Committee of Creditors (COC) and the National Company Law Tribunal (NCLT) on 04.08.2020.

Aggrieved, the appellant filed applications questioning the resolution plan, RP's decision, and actions thereof. The NCLT rejected the applications on the grounds of delay and failure to act against RP's decision despite awareness.

Challenging NCLT's order, the appellant appealed before the National Company Law Appellate Tribunal (NCLAT), contending:

1) Inclusion as a financial creditor, not operational.
2) Status as a secured creditor with a statutory charge over assets.
3) Inaccurate portrayal of its claim submission.
4) Lack of participation in COC meetings.
5) Failure to consider appellant's rights and feasibility of the resolution plan.
6) Alleged misconception regarding delay in pursuing remedies.

The NCLAT dismissed the appeal, citing RP's communication regarding operational creditor status, absence of disbursement qualifying appellant as a financial creditor, delay in challenging the resolution plan, and lack of material irregularity in plan approval, which they are contesting in the present appeal.

Laws Involved:

- Section 30 and 60 of the IBC,2016.
- Regulations 37 and 38 of the CIRP Regulations, 2016.

Issues framed by the court:

i. Whether in exercise of powers under sub-section (5) of Section 60, the Adjudicating Authority (i.e., NCLT) can recall an order of approval passed under sub-section (1) of Section 31 of the IBC?.

ii. Whether the application for recall of the order was barred by time?

iii. Whether the resolution plan put forth by the resolution applicant did not meet the requirements of sub-section (2) of Section 30 of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016?

iv. As to what relief, if any, the appellant is entitled to?

Courts Judgment and Analysis:

Firstly, regarding the exercise of powers under sub-section (5) of Section 60 of the IBC, the court examined the scope of the Adjudicating Authority, which is the NCLT, to recall an order of approval passed under sub-section (1) of Section 31 of the IBC. It referenced Rule 11 of the NCLT Rules, 2016, which preserves the inherent powers of the Tribunal. The court emphasized that the Tribunal possesses inherent powers necessary to discharge its functions effectively for the purpose of doing justice between the parties. It observed that neither the IBC nor the Regulations framed thereunder prohibit the exercise of such inherent power. The court concluded that the NCLT indeed has the power to recall an order in the absence of a statutory prohibition, emphasizing that such power should be exercised sparingly and not as a tool to re-hear the matter.

Secondly, the court addressed whether the application for recall of the order was barred by time. It examined the timeline of filing the recall application and concluded that it was filed within a reasonable time frame upon getting relevant information and immediately after the suspension of the period of limitation was lifted. Therefore, the court found no merit in the argument that the applications were barred by limitation.

Thirdly, the court analyzed whether the resolution plan submitted by the resolution applicant met the requirements of sub-section (2) of Section 30 of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016. It identified several deficiencies in the resolution plan, including the failure to acknowledge the appellant's claim, the incorrect mention of the amount outstanding, the failure to categorize the appellant as a secured creditor, and the lack of provisions for necessary approvals. The court found that these shortcomings materially affected the resolution plan and rendered it invalid. It criticized the lower courts for not addressing these crucial aspects.

Lastly, the court deliberated on the relief to be granted to the appellant. It concluded that since the lower courts failed to consider the appellant's valid grounds for seeking recall of the order and the deficiencies in the resolution plan, the appellant's appeals were entitled to be allowed. The court set aside the impugned order, revoked the approval of the resolution plan, and directed the resolution plan to be sent back to the COC for re-submission after fulfilling the parameters set out by the Code. The court did not order any costs.

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Civil Appeal Nos. 7976 of 2019, Paschimanchal Vidyut Vitran Nigam Ltd. vs Raman Ispat Private Limited before Hon'ble Supreme Court

Sukhman Singh
ASO (Legal)
EPF HQ

In the complex landscape of insolvency law, the recent judgment by the Supreme Court in Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd. has brought much-needed clarity on the priority of claims in cases involving unpaid electricity dues.

This landmark ruling not only elucidates the relation between the Insolvency and Bankruptcy Code, 2016 (IBC), and the Electricity Act, 2003 but also underscores the overarching principles governing insolvency proceedings. In this article, we delve into the nuances of the judgment and its implications for the legal fraternity and stakeholders in insolvency matters.

Background: The case stemmed from unresolved electricity bills owed by Raman Ispat Pvt. Ltd. to Paschimanchal Vidyut Vitran Nigam Ltd. (PVVNL). As Raman Ispat faced insolvency proceedings and eventual liquidation, PVVNL sought clarity on the priority of its claim under the IBC vis-à-vis the provisions of the Electricity Act, 2003. The conflicting statutes raised fundamental questions about the hierarchy of creditor claims and the overarching authority of the IBC in resolving such disputes.

Supreme Court's Analysis: In its meticulous analysis, the Supreme Court grappled with the tension between the IBC and the Electricity Act, 2003. Despite the non-obstante clauses in Sections 173 and 174 of the Electricity Act, the Court unequivocally held that Section 238 of the IBC prevails, establishing the primacy of the IBC in insolvency matters. This ruling not only resolves the immediate dispute but also sets a significant precedent for resolving conflicts between statutes in insolvency proceedings.

Hierarchy of Creditor Claims: Central to the Court's ruling was the elucidation of the 'waterfall mechanism' enshrined in Section 53 of the IBC. By delineating the order of distribution of assets in insolvency proceedings, the Court emphasized the equitable treatment of creditors. Notably, government debts and operational debts were classified lower in priority compared to unsecured financial creditors, ensuring a fair and balanced distribution of assets among stakeholders.

Distinct Nature of Government Dues: Addressing PVVNL's contention regarding the classification of its dues as "government dues," the Court provided clarity on the treatment of such dues under the IBC. Contrary to PVVNL's argument, the Court emphasized that government dues are enumerated separately and do not encompass dues owed to entities like PVVNL, which, despite government participation, do not qualify as part of the state government.

Conclusion: The Supreme Court's ruling in the PVVNL case marks a significant milestone in insolvency law, providing much-needed clarity on the treatment of electricity dues in insolvency proceedings. By affirming the supremacy of the IBC and delineating the hierarchy of creditor claims, the judgment promotes consistency and fairness in resolving conflicts between statutory provisions. Moving forward, this decision is poised to have far-reaching implications for stakeholders in insolvency matters, ensuring a robust and transparent resolution process.

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Ensuring Fair Treatment of Workmen/Employee Dues in Corporate Insolvency. [Civil Appeal no. 5910 of 2019; Sunil Kumar Jain and others Versus Sundaresh Bhatt and others]

Sukhman Singh
ASO (Legal)
EPF HQ

The Sunil Kumar Jain case revolves around the appeal filed by workmen/employees of M/s. ABG Shipyard Limited challenging the decision of the National Company Law Appellate Tribunal (NCLAT) in Company Appeal (AT) (Insolvency) No. 605 of 2019. The dispute primarily concerns the inclusion of wages/salaries of workmen/employees who did not work during the Corporate Insolvency Resolution Process (CIRP) in the insolvency resolution costs.

Facts of the Case: M/s. ABG Shipyard Limited, a private sector shipbuilding yard, underwent CIRP after an application was admitted under Section 7 of the IBC. The appellants, comprising workmen/employees from Mumbai and Dahej yards, sought payment of outstanding salaries/wages. Despite the initiation of CIRP, the National Company Law Tribunal (NCLT) ordered liquidation of the corporate debtor. The appellants appealed to the NCLAT, which directed them to file individual claims before the liquidator.

Key Legal Issues:

- Inclusion of wages/salaries of non-working workmen/employees in CIRP costs.
- Priority of workmen/employee dues in the liquidation process.
- Treatment of provident fund, gratuity fund, and pension fund in liquidation.

Judgment and Analysis: The Hon'ble Court held that only wages/salaries of workmen/employees who worked during the CIRP and when the corporate debtor operated as a going concern should be included in CIRP costs. Such dues would enjoy first priority under Section 53(1)(a) of the IBC. However, wages/salaries of non-working workmen/employees would be governed by Sections 53(1)(b) & (c). The Court clarified that provident fund, gratuity fund, and pension fund are excluded from the liquidation estate assets, ensuring protection for workmen/employee dues.

The Sunil Kumar Jain case underscores the importance of balancing the interests of workmen/employees and creditors in insolvency proceedings. It clarifies the criteria for inclusion of workmen/employee dues in CIRP costs and emphasizes the protection of employee welfare funds during liquidation. This judgment contributes to the evolving jurisprudence surrounding employee rights in corporate insolvency, promoting fairness and equity in the resolution process.

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Priority of Dues: EPF Act vis-à-vis SARFAESI Act

C.Ramesh,
SS, RO, Vellore.

In a case involving *Axis Bank Limited versus The Assistant Provident Fund Commissioner & Recovery Officer* [Writ Petition No.4849 of 2017], the Madras High Court made a significant ruling that has far-reaching implications for the priority of settling dues under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act. The High Court's decision, which stated that the bank, asserting its rights as a secured creditor under the SARFAESI Act, cannot have top priority regarding the *lien* on deposited funds, was based on the understanding that *liens* are not considered a form of security interest under the SARFAESI Act. The court's decision, resting on two key points, is crucial in interpreting these Acts. Firstly, the SARFAESI Act does not mention the term *lien* in Section 2(z)(f). Secondly, Section 31 of the SARFAESI Act explicitly excludes *liens* from its provisions.

History of the Case

The case began when M/s Dharani Offset Printers borrowed money from Axis Bank and used a mortgage as collateral under a loan agreement. However, when M/s Dharani Offset Printers failed to repay the loan, it was classified as Non-Performing Assets. Concurrently, M/s Dharani Offset Printers received a bank guarantee of Rs. 5 lakh from Axis Bank and provided a fixed deposit with a 100% cash margin, against which the Bank created a *lien*.

Simultaneously, M/s Dharani Offset Printers defaulted on their statutory dues under the EPF Act. In response, the Assistant Provident Fund Commission issued a garnishee order under Section 8F (3) of the EPF Act, instructing the Bank to use the defaulter's money to pay the EPF arrears. The Bank, however, argued that it was only obliged to use the defaulter's funds beyond what was owed to the Bank to fulfil the garnishee order. It also asserted its right as a secured creditor under Section 171 of the Indian Contract Act of 1872, claiming its *lien* and the power to acquire security interests. The bank guarantee issued to the borrower was backed by an equivalent fixed deposit with a *lien* placed on it.

On the other hand, the Respondent PF Commissioner argued that Provident Fund arrears should be considered the top priority claim on the defaulter's assets, as specified in Section 11(2) of the EPF & MP Act, 1952, overriding any other law in force. He claimed that the Provident Fund arrears should be deemed the '*first charge'* on the defaulter's assets, notwithstanding anything contained in any other law for the time being in force, having priority over other debts. The Legal Counsel representing the PF Department referred to the Supreme Court's ruling in the case of *Central Bank of India vs State of Kerala and others [Civil Appeal No.95 of 2005]*. In this precedent, the Supreme Court affirmed that the statutory first charge on the property takes precedence over the rights granted to secured creditors such as banks and other financial institutions.

Deliberations of the High Court

The High Court deliberated on interpreting the term *secured creditor* as defined in Section 2(1)(e) of the Provincial Insolvency Act and its correlation with the definition of *Secured Creditor* under the SARFAESI Act. According to the Provincial Insolvency Act, a *Secured Creditor* denotes an individual possessing a mortgage, charge, or lien on the debtor's property, or any portion thereof, as collateral for a debt owed to them by the debtor. Similarly, as per Section 2(1) (zf) of the SARFAESI Act, *security interest* encompasses any right, title, or interest, excluding those delineated in Section 31, held by a secured creditor over the property. This includes but is not limited to, mortgages, charges, hypothecations, assignments, or any other rights, titles, or interests over tangible assets retained by the secured creditor as the property owner, furnished under hire, financial lease, conditional sale, or other contractual agreements securing the obligation to pay any outstanding portion of the asset's purchase price, or obligations incurred or credits provided to facilitate the borrower's acquisition of the asset.

Additionally, it incorporates similar rights, titles, or interests over intangible assets or assignments or licenses of tangible assets, securing obligations to pay any outstanding portion of the intangible asset's purchase price or obligations incurred or credits provided to facilitate the borrower's acquisition of the intangible asset or license thereof.

Consequently, the interpretation of the term *Security Interest* is governed by the overarching provision outlined in Section 31 of the SARFAESI Act. Section 31 explicitly states that the SARFAESI Act's provisions do not extend to *liens* on goods, money, or securities established by or under the Indian Contract Act, 1872, the Sale of Goods Act, 1930, or any other prevailing legislation. Therefore, it was concluded by the High Court that the lien on goods or money under the Indian Contract Act does not qualify as a *security interest*.

Difference between Lien and Mortgage

The term *lien* is defined in Stroud's Judicial Dictionary as "the right to retain possession of a thing until a claim is satisfied, and it is either particular or general." It is important to differentiate between mortgage and lien, as they serve distinct purposes and have differing scopes. A mortgage is established solely through the deliberate actions of both the mortgagor and the mortgagee. On the other hand, a *lien* is often perceived as denoting a security interest that arises by the operation of law, typically imposed within certain relationships, such as the unpaid vendor's lien. However, it is pertinent that liens can also be created through contractual agreements and may resemble a charge. Whether a lien is construed as such will hinge upon the specific nature of the lien in question.

Fixed Deposits Create Not a Security Interest

Two main arguments support the Madras High Court's ruling. Firstly, the absence of the term *lien* in Section 2(z)(f) of the SARFAESI Act is significant. Secondly, Section 31 of the SARFAESI Act explicitly states that its provisions do not encompass *liens*. Consequently, the Court held that a bank, claiming status as a secured creditor under the SARFAESI Act, cannot assert a *'first charge'* over a *lien* on a deposit since the SARFAESI Act does not recognise a *lien* as a form of security interest. Furthermore, the Court emphasised that a fixed deposit creates not a security interest but merely a *lien*. Since the SARFAESI Act does not classify a *lien* as a secured interest, banks are precluded from asserting themselves as secured creditors.

Responsibilities of the Banks in Case of Sale of Attached Properties

The EPFO Recovery Officer is empowered to execute attachment and sale procedures concerning the defaulter's property in accordance with Section 8-B of the EPF Act. Furthermore, the EPFO Recovery Officer has the authority to attach a property that the defaulter mortgaged to a bank. Consequently, scenarios may arise wherein the Authorized Officer of the Bank is compelled to initiate the sale of the defaulter's mortgaged property, which has already been subject to attachment by the EPFO's Recovery Officer and thus is encumbered.

Rules 9(7) to 9(10) of the Security Interest (Enforcement) Rules, 2002, address the resolution of encumbrances concerning the sale of immovable property. Rule 9(7) allows the authorised officer to permit the purchaser to deposit funds for discharging encumbrances and associated interest on the sold property. Upon such deposit, the officer may issue notices to relevant parties and facilitate payments accordingly. Any surplus remaining after encumbrance removal costs must be returned to the purchaser within 15 days of finalising the sale. Rule 9(9) mandates the delivery of property free from known encumbrances upon deposit. Similarly, Rule 9(10) requires the sale certificate to specify whether the purchaser obtained the property free from known encumbrances. These rules collectively impose an obligation on the authorised officer of the bank to handle the sale of a defaulter's mortgaged property, previously attached by the EPFO's Recovery Officer. The officer must collect outstanding EPF dues, which prompted the attachment, clear encumbrances, and only then proceed with the sale. Before issuing the sale certificate to the successful bidder, the property must be free from encumbrances.

Conclusion

The verdict rendered by the Madras High Court in the case of *Axis Bank Limited versus The Assistant Provident Fund Commissioner & Recovery Officer* stands as a significant milestone in clarifying the hierarchy of debt settlement under relevant laws. By rejecting Axis Bank's assertion of top priority regarding the *lien* on deposited funds, the court reaffirmed the principle that *liens* are not recognised as a form of security interest under the SARFAESI Act. This ruling emphasises the importance of upholding the statutory first charge on assets, particularly in cases involving statutory dues such as Provident Fund arrears.

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Company Appeal (AT) (Insolvency) No. 245 of 2022 [Regional Provident Fund Commissioner, EPFO, R.O., Jamshedpur Versus Ms. Mamta Binani, RP & Ors.] NCLAT, New Delhi: Priority of provident fund dues in insolvency proceedings.

Shashi Bhusan Kumar
Regional PF Commissioner-I,
RO, Jamshedpur.

Background: This Appeal had been filed challenging the order dated: 11.05.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in IA(IB) No. 1332/KB/2020 by which order the Adjudicating Authority had allowed the application filed by the Resolution Professional for approval of the Resolution Plan. The appeal concerns the case of RD Rubber Reclaim Ltd., focusing on the resolution process under the Insolvency and Bankruptcy Code (IBC). The Appellant, Employees Provident Fund Organization, Regional Office, Jamshedpur, Jharkhand, filed the appeal challenging the approval of the Resolution Plan by the Adjudicating Authority (NCLT), which it claimed did not fully address their dues under Sections 7A, 7Q, and 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Claims and Admission: The claims submitted by the EPFO and the amounts admitted by the Resolution Professional were detailed as follows:

Under Section 7A: Fully paid

Under Section 7Q: Not paid

Under Section 14B: Not paid

EPFO argued that the amounts under Sections 7Q and 14B also constituted part of the provident fund dues and should be paid in full as per the Supreme Court's ruling in the "Maharashtra State Cooperative Bank Limited" case, which prioritizes these amounts under Section 11 of the Act .

Tribunal's Findings:

Section 7A Dues: The Tribunal noted that the claim under Section 7A was paid in full.

Section 7Q Dues: The Tribunal directed the Successful Resolution Applicant (SRA) to pay the admitted claims under Section 7Q within two months from the date of the order .

Section 14B Dues: The Tribunal granted liberty to the SRA to apply to the Central Board for a waiver of the damages imposed under Section 14B. The SRA is to file this application within 30 days, and the Central Board is to take an expeditious decision within three months.

Conclusion: The appeal was disposed of with specific directions for the payment of dues under Section 7Q and the provision for seeking a waiver of damages under Section 14B. The impugned order dated 11.05.2021 was affirmed, with the Tribunal ensuring that the provident fund dues under Section 7Q are to be paid in full while providing a mechanism for addressing the damages under Section 14B .

Final Directions: SRA to pay claims filed under section 7Q within two months.

SRA to apply for a waiver in respect of claims under Section 14B within 30 days, with the Central Board to decide within three months.

Implications: This order reaffirms the priority of provident fund dues in insolvency proceedings and clarifies the process for seeking waivers of statutory damages, ensuring compliance with the principles laid down by higher judicial authorities.

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Right to Life and Workers' Statutory Dues: a Brief Discussion on the Insolvency and Bankruptcy Code, 2016 vis-à-vis Employees Provident Fund & Miscellaneous Provisions Act, 1952

Sarbani Mohapatra
Accounts Officer RO Durgapur

The Hon'ble NCLT Mumbai in the Precision Fasteners Ltd vs. EPFO, 2018 case held that"the right of all other creditors over the assets of the company is a property right, whereas workmen dues, more specially PF dues of workmen, are interwoven with Right to Life because the workmen all through their life save some portion of the hard earnings for their later life after retirement, if such sums are being interlinked on par with debts of the creditors of the company, secured or unsecured as the case may be, then it is nothing but diluting most valuable and inalienable right of a person on par with a property right subordinate to right to life …."

The Status of Employees PF Dues in Corporate Insolvency Resolution Process

Any sum deducted by an employers from its employees' wages for depositing in the latter's provident fund constitutes a statutory obligation of a fiduciary nature. When an establishment becomes insolvent or financially unable to meet its debt payments, either the establishment itself or its creditor/s can approach the National Company Law Tribunal ('NCLT') and file an application to initiate the Corporate Insolvency and Resolution Process (CIRP). It is then that the Insolvency and Bankruptcy Code, 2016 (IBC 2016) comes into the picture.

IBC is a law aimed at a time-bound CIRP. Under it, the provident fund (PF) dues of employees form part of third-party assets and as per section 36 (4) of the Code they are not to "be included in the liquidation estate assets and shall not be used for recovery in the liquidation". As such employees PF dues become payable before the waterfall mechanism for creditors kicks in. Upon applying the judicial doctrine of harmonious construction to section 11 of the EPF & MP Act, 1952 and the recovery provisions under IBC 2016, it is established that PF dues constitute the 'first charge' on the assets of a corporate debtor. This means that their payment must be prioritised over all other debts.This is also in keeping with the Constitutional spirit of article 21 which guarantees the fundamental right to life, since a part of the hard earned money of a worker goes into his/her provident fund, a source of sustenance and dignity during the sunset years.

EPFO's Role in the Expeditious Recovery of Workers' PF Dues

In view of the crucial importance that time-bound recovery of PF dues from insolvent companies has, the EPFO Head Office has issued a comprehensive Standard Operating Procedure for handling IBC cases. It outlines the specific responsibilities that each division of EPFO has vis-à-vis these cases at all three organizational levels, i.e. the head office, zonal offices and regional/district offices. These range from:

(I) collection of information about applications filed before the Insolvency and Bankruptcy Board (IBBI)
(II) identification of Regional Offices under whose jurisdiction the insolvent establishment is registered
(III) timely transmission of relevant information to the respective ZOs which would further transmit it to concerned ROs/Dos
(IV) desk review of the insolvent establishment by ROs
(V) assigning of inspection on Shram Suvidha Portal (SSP) which ordinarily has to completed within 7 days
(VI) fast tracked conclusion of 7A inquiry
(VII) issuance of special recovery certificates on the day the final order is passed
(VIII) robust recovery action and consistent monitoring at all three levels

All the sections involved have to work in tandem to effect satisfactory recovery of employee dues from insolvent establishments.

Conclusion

Multi-departmental collaborationis key to protecting workers' rights in IBC cases. Database of other organisations like GST, MCA can prove to be of significance here. Constant liaising with Insolvency Resolution Professionals and IBBI is crucial. Adherence to the timelines given under the code is also of utmost importance in these cases. In the event of recovery becoming impossible, due to non-traceability or insufficient assets of the establishment, the employer in his personal capacity becomes liable for recovery action. Such is the primacy given to workmen's PF dues under IBC 2016 as interpreted through numerous court judgments as they form an integral part of the inalienable right to life.

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Analysis of the Order of Hon'ble National Company Law Tribunal, Division Bench, Kolkata

Case Title:

I.A. No. 1954 of 2023 in CP(IB) No. 1684/KB/2018 in the matter of EPFO, Regional Office, Pune …….. Applicant

Versus

Incab Industries Limited & Anr. ……. Respondents

Judgement date on : 25.06.2024

Delay in submission of claim on the part of the applicant should not be treated as bad in law

Rony Ghosh Dastider,
Section Supervisor,
RO, Kolkata

The recent judgement of Hon'ble NCLT, Kolkata inI. A. no. 1954 of 2023 in C.P.(IB) No. 1684/KB/2018in the matter of Employees' Provident Fund Organisation – Vs- Incab Industries Limited & Anr regarding delay in submission of claim on the part of EPFO will not allow the corporate debtor to escape payment of provident fund dues.

EPFO had preferred the application in I. A. no. 1954 of 2023 against Mr.Pankaj Tibrewal, Resolution Professional of Incab Industries Limited seeking direction to the respondent to admit the claim of the applicant with regard to Provident Fund and delay in submission of claim on the part of the applicant should not be treated as bad in law.

Summary of the case

Incab Industries Limited was put into Corporate Insolvency Resolution Process on 07.08.2019 vide order of the National Company Law tribunal, Division Bench, Court no. II, Kolkata. On invitation of claim by the thenResolution Professional Mr. Shashi Agarwal, EPFO, Regional Office, Pune had submitted claims for a sum of Rs 6,85,19,385/-.

The Tribunal vide Order dated 16.06.2021 appointed Mr. Pankaj Kumar Tibrewal as Resolution Professional replacing the earlier Resolution Professional. Thereafter, EPFO forwarded the dues to the present Resolution Professional on 13.07.2021. The Resolution Professional vide email dated 03.08.2021 asked to submit claim in the relevant form. The claim form was sent and the same was received on 10.11.2021.

On 16.11.2021, the Resolution Professional sent an email to forward further documents, calculation sheets etc and had informed that the claim was under verification.

The required documents was forwarded to Resolution Professional on 04.08.2022 but on 08.08.2022, Resolution Professional intimated that he was not in a position to consider that claim since the same was received beyond the last day of submission of the resolution plan dated 16.11.2021.

EPFO thereafter forwarded an updated claim of Rs 9,03,07,028/- to the Resolution Professional. Finally, another updated claim of Rs 26,40,88,073/- was submitted on 17.04.2023 which included all claims from July 2007 to 2020. The sum included interest damages penalty etc under various sections of EPF & MP Act, 1952.

All the claims forwarded by EPFO was rejected on the ground that all claims including the first one was received belatedly well after the last date for receipt of such claims.

Hence, application was preferred by EPFO before Hon'ble NCLT seeking the following reliefs:-

(i) Delay in submission of claim on the part of the Applicant against Respondent no.1 Incab Industries Limited is not to be treated as bad in law since the Resolution Professional should keep the claim of EPFO segregated as it is the first charge
(ii) The Respondent no.2 Mr.Pankaj Tibrewal being the Resolution Professional herein be specifically directed to admit the claim of the Applicant submitted against the Respondent no.1.

Ld. Counsel representing EPFO cited judgments rendered by Hon'ble NCLT in the case of Jet Aircraft Maintenance Engineers Welfare Association Vs Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd & Ors reported in (2022) SCC Online NCLT 418 and in M/s L & T Finance V. Zillion Infra Projects (I.A. 5939 of 2022) Company Petition no. (IB)694/(PB)/2018 and in V-Con Integrated Solution Pvt Ltd Vs Acharya Techno Solution (India) Pvt Ltd and another (2021 SCC online NCLT 5518) & Tourism Finance Corporation of India Pvt Ltd –Vs- Rainbow Papers Ltd & Ors, Company Appeal (AT)(Insolvency) No. 354 of 2019.

Summary of the Judgement

The Bench of Hon'ble Judges D. Arvind and Bidisha Banerjee pronounced Judgement on 25.06.2024 with the view that the wages/salaries of the workmen/employees of the Corporate Debtor for the period during CIRP can be included in the CIRP costs. The Provident Fund, Gratuity and Pension dues have been given priority as they are outside the Liquidated Estate assets as per Section 36(4)(a)(iii) of IBC.

The Hon'ble bench had condoned the delay in filing of claims made by EPFO and directed that that actual provident fund dues (employees and employers) contribution with interest fixed by the government from time to time is payable in full whereas penal interest, penalty, damages if any that might have been imposed by the EPFO will have to be treated as an unsecured operational debt and be dealt as per Section 30(2)(b) of the IBC. The Bench is of the view that such penalties or damages etc. imposed cannot be treated as the asset of EPFO in the books of the corporate debtor.

Accordingly, I.A, no. 1954 of 2023 was disposed of with direction to Resolution Professional to verify the claim and accordingly admit the claim and apprise CoC and SRA for necessary approval/modification in the plan as may be required.

While pronouncing the Judgement the Hon'ble members of the NCLT has taken the cognizance of the Judgement pronounced by the Hon'ble NCLAT in Tourism Finance Corporation of India Pvt Ltd –Vs- Rainbow Papers Ltd & Ors, Company Appeal (AT)(Insolvency) No. 354 of 2019.

Future Consideration

Regarding the view of the Hon'ble NCLT in respect to penalties or damages etc. imposed cannot be treated as the asset of EPFO in the books of the corporate debtor, EPFO may move into the higher bench at New Delhi since the imposition of damages under Section 14B of the Act serves a twofold purpose. It serves as safeguard of the fund as well as a deterrent. The predominant object is to penalize, so that an employer may be thwarted or deterred from making any further default. The assessed amount is neither profit nor revenue. EPFO is only the custodian of the funds under statute and the penal damages amount is only for safeguard of the fund from its erosion.

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Delay in claiming the EPF dues was on account of delay in adjudication of Section 7A proceedings under the EPF and MP Act, 1952 shall be considered by Resolution Professional

Manoj Kumar
Regional P.F.Commissioner – I
Regional Office, Rajahmundry

In the matter of
Regional Provident Fund Commissioner, Jaipur, Applicant
Versus
M/s Servel India PVT Ltd. Okhla Phase-II, New Delhi Respondent No.1 and Reetesh Kumar Agarwal , Resolution Professional, M/s SErvel India Pvt. Ltd., Respondent No.2
& Pooja Marbles, Gurugram, Haryana-122002, Respondent No.3,

And in the matter of

OM Logistics Limited Operational Creditor
Versus
Servel India Private Limited Corporate Debtor

Before the Hon'ble NCLT, New Delhi Bench (Court V)

In the above said matter, the present application has been filed by the RO, EPFO, Jaipur (for brevity Applicant") under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (for brevity "IBC/Code") against the Reetesh Kumar Agarwal, the Resolution Professional of M/s Servel India Pvt. Ltd. (for brevity "Respondent No.2") for seeking following reliefs.

i. Allow the present application and set aside the Impugned Letter and Email dated 27.12.2021 and 04.06.2022 issued by Respondent No.2 by which the claim of the Applicant has been rejected by him; and
ii. Direct the Respondent No.2 to set aside the amount to the extent of the Applicant's claim apart out from the Liquidation Estate of the Corporate Debtor and release it in favour of Applicant in primacy over all other dues;
iii. Pass any other orders / directions that this Hon'ble Tribunal may deem fit in the facts and circumstances of the matter.

Resultantly the Hon'ble NCLT upheld that ::

The delay in claiming the EPF dues was on account of delay in adjudication of Section 7A proceedings under the EPF and MP Act, 1952. Since the EPF dues are not a part of the assets of the Corporate Debtor and are merely in possession of the Corporate Debtor, we are of the view that the Resolution Professional was duty bound to release the dues of the Applicant. We hereby direct the Respondent No.2/ Resolution Professional to consider the claim of Applicant and take decision in terms of the observations and judgements mentioned above. Further, since the Resolution Plan has already been approved by the CoC, the Resolution Professional should take steps to apprise the Successul Resolution Applicant [SRA] about the claim of the Applicant to enable the SRA to make amends in the Resolution Plan to provide for the claim of the Applicant. In the alternative, the SRA may file an Additional Affidavit undertaking to settle the claim of the Applicant.

In view of the above discussion, the present IA/3118/2022 in IB-2728/ND/2019 stands allowed and disposed off.

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SC Judgments on Insolvency Code: Implications for EPFO

C.Ramesh,
SS, RO, Vellore.

Following the enactment of the Insolvency and Bankruptcy Code (IBC), a series of landmark judgments by the Supreme Court of India have established important precedents that now serve as the law of the land. These judgments are particularly significant for the Employees' Provident Fund Organisation (EPFO), as they provide a legal framework that can be effectively utilised in implementing and enforcing the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. By aligning with the principles laid out in these Supreme Court decisions, the EPFO can ensure that Provident Fund dues are prioritised and protected during corporate insolvency proceedings. This article examines how these rulings influence the EPFO's strategy for protecting workers' social security entitlements during insolvency and liquidation under the IBC.

I. Prioritisation of Provident Fund Dues in Corporate Insolvency

In recent judicial decisions, the importance of Provident Fund dues has been emphasised, particularly in corporate insolvency resolution processes. Provident Fund dues are regarded as the assets of the workers, held in trust by the Corporate Debtor, and not as part of the Corporate Debtor's assets. These dues must be paid in full, even during insolvency proceedings.

This principle was upheld in the National Company Law Appellate Tribunal's (NCLAT) decision regarding the Assam Tea Employees Provident Fund Organization's appeal in *Company Appeal (AT) (Insolvency) No. 262 of 2022*. In the case mentioned, HAIL Tea Limited is the corporate debtor against whom the Corporate Insolvency Resolution Process (CIRP) was initiated. The Assam Tea Employees Provident Fund Organisation had filed a claim against HAIL Tea Limited for the non-payment of Provident Fund dues.

In this case, the NCLAT underscored that PF dues, as statutory liabilities, take precedence over other debts, and any resolution plan must ensure full payment of these dues to avoid invalidity. Despite arguments that PF claims should be treated as operational debts subject to haircuts along with other creditors, the NCLAT held that such dues are protected under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

The ruling clarified that non-payment of the full amount of PF dues constitutes a violation of the legal provisions, mandating complete satisfaction of these claims. This decision is in line with the precedent set by the Hon'ble Supreme Court in *Maharashtra State Cooperative Bank Limited vs. Assistant Provident Fund Commissioner & Others, (2009) 10 SCC 123*, which further reinforced the priority of PF dues. This ruling reinforces the legal obligation of companies and resolution professionals to prioritise provident fund contributions during insolvency proceedings, ensuring that workers' rights to their retirement benefits are fully protected .

In Civil Appeal No. 9383 of 2022, the Supreme Court upheld the order of the NCLAT, New Delhi, and reaffirmed the prioritisation of EPF dues.

II. Non-Payment of Statutory Dues Constitutes a Violation of Law

(a) Sikander Singh Jamuwal Case

In *Sikander Singh Jamuwal vs Vinay Talwar Resolution Professional*, [(2022) ibclaw.in 221 NCLAT], the Appellant, an ex-employee of the Corporate Debtor, contended that their rightful dues were not consistently paid by the Corporate Debtor since 2012. He claimed that the Resolution Plan failed to consider payment of the entire Provident Fund dues owed to them. The Provident Fund dues, as assessed by the Provident Fund Commissioner, were not fully accounted for in the Resolution Plan. Additionally, the Appellant alleged discrimination in the Resolution Plan, citing unequal payments to Financial Creditors (21.6%) compared to Operational Creditors (12.67%). Consequently, the NCLAT

directed the Successful Resolution Applicant to promptly disburse the entire outstanding provident fund dues as per the regulations outlined in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and directed that the Resolution Plan be amended accordingly. It further observed that the payment or non-payment of provident funds is not a matter of commercial wisdom, and necessary compliance with the law is a must.

The Supreme Court dismissed Civil Appeal [6721 of 2022], filed by the Successful Resolution Applicant, in an order dated September 23, 2022, affirming the NCLAT findings.

(b) Jet Aircraft Maintenance Engineers Welfare Association case

In *Jet Aircraft Maintenance Engineers Welfare Association vs Ashish Chhawchharia*, Resolution Professional of Jet Airways (India) Ltd., and others [(2022) ibclaw.in 861 NCLAT], the Principal Bench of the NCLAT examined the issue of EPF dues in greater detail. Herein, the workmen and the Provident Fund Commissioner had filed separate appeals against non-payment of the EPF dues in full under a Resolution Plan already approved by the NCLT. The NCLAT cited and differentiated all its prior judgements on EPF dues and finally followed the line of reasoning adopted in the *Tourism Finance* case and went one step further by clarifying the following:

1. EPF dues have to be paid in full calculated till the Insolvency Commencement Date, along with any damages and interest as levied as per the provisions of the EPF Act, since they do not form part of the assets of the Corporate Debtor by Section 18 and Section 36 of the Code.
2. EPF dues must be paid irrespective of whether or not the Corporate Debtor has maintained a separate fund for provident fund contributions.
3. The Resolution Applicant must provide for payment of EPF dues in full under the Resolution Plan to ensure that the Resolution Plain complies with Section 30(2)(e) of the I & B Code.
4. EPF dues calculated for the period post the Insolvency Commencement Date will be paid under CIRP costs under the Resolution Plan only to the workers and employees retained in employment during the CIRP.

The matter arising in the context of Jet Airways raised the question of whether the failure of the Successful Resolution Applicant to make payment of statutory obligations such as Provident Fund and Gratuity would constitute a violation of Section 30(2)(b) and (e) of the IBC. The legal precedent established by the Hon'ble Supreme Court in the case of *Committee of Creditors of Essar Steel India Ltd. v Satish Kumar Gupta and Others*, [2019 (16) SCALE 319 Comp App (AT) (INS) No. 02 of 2021] unequivocally dictated that every resolution plan must adhere to the requirements outlined in Section 30(2), particularly sub-sections (b) and (e). This implies mandatory compliance with the prevailing statutory provisions applicable as of the relevant date.

In this case, the NCLAT emphasised that the commercial decisions of the Committee of Creditors (CoC) should not be interfered with during judicial review, only when the Resolution Plan complies with section 30(2) of the IBC. The court ruled that non-payment of statutory Provident Fund dues violates section 30(2)(e) of the IBC, making the Resolution Plan non-compliant. Additionally, the court recognised that failing to acknowledge the first charge of the EPFO under section 11(2) of the EPF Act also constitutes a violation of section 30(2)(e) of the IBC. The Supreme Court upheld this decision, establishing it as a judicial precedent in cases where the law is silent on such matters.

***(c) Kushal Ltd* case**

In the matter of *Tourism Finance Corporation of India Ltd. versus Rainbow Papers Ltd. & Others*. (2019) [ibclaw.in 463 NCLAT], the case involved the approval of a Resolution Plan by the Adjudicating Authority. A subsequent appeal was initiated by the Regional Provident Fund Commissioner, contending that the Successful Resolution Applicant was obligated to remit the entire provident fund amount. Yet, the Resolution Professional permitted only a partial payment. The appeal relied upon Section 36(4)(a)(iii) of the IBC.

In its judgment, the Appellate Tribunal affirmed that no provision of the Employees Provident Funds and Miscellaneous Provision Act, 1952 conflicted with the IBC provisions. It further directed the Successful Resolution Applicant to remit the full amount of the provident fund as stipulated.

M/s Kushal Limited (successful resolution applicant) filed a Civil Appeal No.1920/2020 asserting that the approved resolution plan adequately addressed all statutory obligations and that the Provident Fund authorities' post-CIRP imposition of punitive damages and Section 7Q interest was impermissible under the law. They further contended that, by Section 238, the I & B Code provisions override Sections 7Q and 14B of the EPF & MP, 1952. After consideration, the Supreme Court declined to intervene in the NCLAT's order. The apex court affirmed the NCLAT's directive, compelling the successful resolution applicant to release the provident fund dues, including penal damages and interest components.

III. Payment of Wages/PF dues during CIRP

In the *Sunil Kumar Jain vs Sundaresh Bhatt* [Civil Appeal No. 5910 of 2019, decided on April 19, 2022], the Supreme Court discussed the two key points related to the inclusion of wages/salaries of workers/employees during the CIRP and the treatment of the Provident Fund, Gratuity Fund and Pension Fund in the liquidation process.

1) The wages/salaries of workers/employees during the CIRP can be considered as part of CIRP costs if it is established that the Interim Resolution Professional/Resolution Professional managed the corporate debtor's operations as a going concern during the CIRP and the concerned employees worked during that period. If proven, these wages/salaries must be paid in full as per Section 53(1)(a) of the Insolvency and Bankruptcy Code (IB Code).

2) According to Section 36(4) of the IB Code, when provident funds, gratuity funds, and pension funds are excluded from the liquidation estate assets, the share of workmen's dues should also be kept outside the liquidation process. The relevant workers/employees should be paid from these funds, and the Liquidator is not entitled to make any claims on these funds.

IV. EPF dues are different from 'Government dues'

In paragraph 46 of the judgment in *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited & Ors.,* Civil Appeal No. 7976 of 2019, 2023 INSC 625, the Supreme Court clarified the distinction between statutory dues, such as provident fund contributions, and government dues like taxes. The Court emphasised that statutory dues owed to entities like provident funds do not fall under the category of government dues, which typically include taxes, tariffs, or other amounts that must be paid into the Consolidated Fund of India or a State. Even if a statutory corporation is involved in the management or collection of these dues, it does not transform them into government dues. The Court further explained that statutory corporations or entities that manage provident funds, for example, may be operational creditors, financial creditors, or secured creditors depending on their dealings with the corporate debtor. These dues are distinct from those owed to the government under statutes like tax laws, which are classified under government dues and have a different priority in insolvency proceedings.

This clarification helps delineate the scope of what constitutes government dues, ensuring that statutory obligations like provident fund contributions are recognised and treated separately, with their specific legal standing and priority in the insolvency framework.

V. Supremacy of the IBC over the Companies Act

The Moser Baer Karamchari Union case involved the insolvency proceedings of M/s Moser Baer India Ltd., where the Moser Baer Karamchari Union, representing the employees of the company, filed a petition challenging the treatment of their Provident Fund dues under the I & B Code. The main issue centred around the interpretation of Sections 326 and 327 of the Companies Act, 2013, in relation to the provisions of the I & B Code, 2016. These sections of the Companies Act, prioritising workmen's dues (including the Provident Fund dues) along with secured creditors. However, the I &

B Code has its own set of rules for asset distribution, which led to conflicts in the repugnant areas regarding which law should take precedence.

In this case, the Supreme Court upheld the provisions of the I & B Code, noting that the hierarchy and waterfall mechanism under the Code are designed to provide an efficient and equitable solution for liquidation, aligning with global practices. The Supreme Court emphasised that Sections 326 and 327 of the Companies Act, 2013 are not applicable under the I & B Code and this exclusion is not considered arbitrary or unconstitutional. This was a significant point because it underlined the I & B Code's supremacy in matters of insolvency and liquidation.

The Supreme Court's decision reinforced the I & B Code's framework and clarified that the Code overrides other laws, including the Companies Act, in matters of insolvency. However, the protection of Provident Fund, Pension Funds and Gratuity Funds remain intact as per the provisions of the I & B Code, highlighting the Court's recognition of the need to safeguard the workers' entitlements even within the framework of corporate insolvency.

In this connection, the Supreme Court of India included a significant footnote. This footnote states that the court, for the purposes of this particular decision, did not interpret sub-clause (iii) of clause (a) of sub-section (4) of Section 36 of the Code, as this issue is still under debate and pending consideration in other cases.

Nonetheless, the footnote highlights a specific legal principle related to the protection of EPF dues in the context of insolvency and liquidation processes. It emphasises that the amounts due to any workmen or employees from provident funds, pension funds, or gratuity funds are legally protected and cannot be subject to reduction or dilution, even during the rehabilitation or revival of a company. These funds are excluded from the "waterfall mechanism," which is the order of priority in which claims are settled during liquidation. Consequently, these protected workers' funds cannot be used to recover debts or shared among creditors in the event of a company's liquidation. This protection ensures that employees' entitlements remain secure, irrespective of the company's financial distress or insolvency proceedings.

VI. Jurisdictional Boundaries of the NCLT

In *Embassy Property Developments Pvt Ltd v. State of Karnataka* [2020] ibclaw.in 12 SC, the Supreme Court addressed key issues concerning the jurisdictional boundaries of the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code (IBC). The case raised two pivotal questions: First, whether the High Court could exercise its powers under Articles 226/227 of the Constitution in IBC matters despite the availability of a statutory appeal to the National Company Law Appellate Tribunal (NCLAT). Second, whether the NCLT/NCLAT could investigate allegations of fraud within proceedings initiated under the IBC.

The dispute centred around a mining lease held by the Corporate Debtor, M/s Tiffins Barytes Asbestos & Paints Ltd., in Karnataka. The NCLT's order, passed in response to a Miscellaneous Application concerning this lease, was challenged in the High Court, primarily because the resolution process was fraudulently initiated. Despite objections, the NCLT allowed the application, prompting the State of Karnataka to challenge the decision. The counsel for the Resolution Applicant argued that the High Court should not interfere, as there was an alternative remedy available under Section 61 of the IBC. The Committee of Creditors further contended that the IBC is a comprehensive code that precludes challenges to NCLT orders outside its framework, arguing that the NCLT had not overstepped its jurisdiction in recognizing a statutory right.

However, the Attorney General countered that the High Court retains the authority to review cases where a tribunal, such as the NCLT, lacks inherent jurisdiction. He emphasized that the NCLT's jurisdiction is confined to contractual disputes and does not extend to judicial review of decisions made under other public statutes.

The Supreme Court analysed the jurisdiction of the NCLT under Section 60(5) of the IBC, which grants broad authority over questions related to insolvency resolution. However, the Court clarified that decisions by government or statutory authorities in public law matters fall outside the NCLT's jurisdiction. The Court emphasised the limitations of Section 60(5), indicating that the NCLT cannot adjudicate issues in the public law domain. This judgment establishes that the NCLT is restricted from examining the judicial validity of orders issued by the competent authorities under the EPF & MP Act.

VII. Quasi-Judicial Proceedings are Not Barred by Moratorium

The interpretation of the term "Suits and Proceedings" in Section 14(1)(a) of the Insolvency and Bankruptcy Code (IBC) was scrutinized by the Delhi High Court in *Power Grid Corporation of India Ltd. vs. Jyoti Structures Ltd.* The Court clarified that the term "proceedings," as used in the section, is not all-encompassing, meaning that the moratorium under this provision does not extend to every type of proceeding against a corporate debtor. Specifically, the court noted that writ proceedings under Articles 32 or 226 of the Constitution are not barred by the moratorium, as reinforced by the NCLAT in *Canara Bank vs. Deccan Chronicle Holdings Ltd.*

Given the relatively recent enactment of the IBC, judicial interpretations of the moratorium provisions are still evolving. However, Section 14 of the IBC parallels Section 446 of the Companies Act, 1956, which has been judicially interpreted to limit the moratorium to certain proceedings that can be efficiently managed by the winding-up court. Notably, the Supreme Court, in *S.V. Kandeakar vs. V.M. Deshpande*, ruled that assessment proceedings under the Income Tax Act are independent legal processes not covered by the moratorium, as these matters fall outside the jurisdiction of the company court. This precedent underscores that quasi-judicial proceedings, including those under other public statutes like the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, are not automatically barred by the moratorium imposed by the IBC.

In *M/s Embassy Property Developments Pvt. Ltd. v. State of Karnataka* [2020] ibclaw.in 12 SC, the Supreme Court clarified that an interim resolution professional (IRP) or resolution professional (RP) must represent the Corporate Debtor in both judicial and quasi-judicial proceedings as needed, particularly when dealing with assets under the debtor's ownership. The Court emphasized that the Corporate Debtor cannot bypass established legal processes by invoking Section 60(5) of the IBC to bring claims directly before the NCLT. This ruling reinforces those quasi-judicial proceedings, such as those under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and similar statutes, are not barred by the moratorium under Section 14(1)(a) of the IBC.

VIII. Strict Adherence to Appeal Timelines Under IBC Reinforced by Supreme Court

In *Safire Technologies Pvt. Ltd. vs. Regional Provident Fund Commissioner & Anr.*, the Supreme Court reinforced the importance of adhering to the strict timelines for filing appeals under Section 61(2) of the Insolvency and Bankruptcy Code (IBC). The case involved a delayed appeal by the Regional Provident Fund Commissioner against the NCLT’s order approving a resolution plan, filed 388 days after the order. The Court held that appeals must be filed within 30 days, with a maximum extension of 15 days if sufficient cause is shown, rejecting the argument that the limitation period should start from the date of knowledge. The Supreme Court allowed Safire Technologies' appeal and set aside the NCLAT’s notice, emphasising that delays beyond the prescribed period are impermissible.

The Supreme Court of India, in its judgment dated August 25, 2023, in the case *Employees Provident Fund Organization (EPFO) vs. Fanendra Harakchand Munot & Anr.*, addressed the need for strict adherence to the timelines under the Insolvency and Bankruptcy Code (IBC), 2016, by the Commissioner and employees of the EPFO. The Court emphasized that any failure to comply with these timelines could have legal consequences, and action must be taken against any employees who neglect their duties. The Court also clarified that the impugned judgment from the National Company Law Appellate Tribunal (NCLAT) does not affect the EPFO's rights to proceed according to the law under Section 36(4)(a)(iii) of the IBC. Consequently, the appeal was dismissed, and any pending

applications were disposed of. The delay in filing the appeal was condoned, but the Court found no merit in interfering with the conclusions of the NCLAT's judgment.

IX. Criminal Prosecution of the Employer is Not Barred under IBC

The Supreme Court in *P. Mohanraj & Ors. v. M/s. Shah Brothers Ispat Pvt. Ltd.*, Civil Appeal No. 10355 of 2018, clarified that the initiation of criminal prosecution against the defaulting Directors of a company is not prohibited by the moratorium under the IBC. Notably, the Court did not conclude that the moratorium provision would exclude criminal liability. Instead, the judgment differentiated between the personal liability of the Directors and the liability of the undertaking (Company) itself. It was emphasised that the term "employer" under the Employees' Provident Fund Scheme refers specifically to the individuals managing the undertaking rather than the undertaking itself. Consequently, the personal liability of these individuals does not fall within the scope of the moratorium provision.

The Supreme Court's judgments on the Insolvency and Bankruptcy Code (IBC) have solidified the legal framework for prioritising Provident Fund dues during corporate insolvency proceedings. These rulings underscore the distinct legal standing of Provident Fund contributions, ensuring their protection even in complex insolvency cases. By adhering to these precedents, the EPFO can effectively safeguard workers' social security benefits, maintaining their priority over other debts and reinforcing the importance of statutory compliance in corporate resolutions.

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Legal Precedence of Statutory Claims Over Exchange By-Laws: A Case Analysis of National Stock Exchange of India Ltd. v. The Assistant Provident Fund Commissioner and Others

Amit Kumar
SSA, Regional Office, Chennai (South)

Introduction

The recent judgment by the High Court of Judicature at Madras in National Stock Exchange of India Ltd. v. The Assistant Provident Fund Commissioner and Others (W.A. No. 609 of 2006) has provided significant clarity on the interplay between statutory laws and the by-laws of regulatory bodies. The case revolves around the priority of claims involving the Employees' Provident Fund (EPF) Act and the by-laws of the National Stock Exchange of India Ltd. (NSE). This judgment has far-reaching implications for how regulatory frameworks under different laws coexist, especially when it comes to financial liabilities and statutory claims.

Background of the Case

The appellant, the National Stock Exchange of India Ltd. (NSE), filed an appeal against the order of the learned Single Judge of the High Court, who upheld the attachment order passed by the Assistant Provident Fund Commissioner under the EPF Act. The attachment order required NSE to release funds withheld as security deposits provided by Premier Securities Ltd. (the second respondent), a trading member of NSE, due to defaults committed under the EPF Act.

The NSE argued that, as per its by-laws and regulations established under the Securities Contract (Regulation) Act (hereinafter "SCR Act"), it had a first and paramount lien over the security deposits of its trading members. The by-laws give the NSE priority over any other debts or claims on its trading members. NSE contended that these by-laws, which have statutory force, should override the attachment order made under the EPF Act. The EPF authorities, however, argued that the EPF Act is a special enactment with a statutory first charge on the dues, which supersedes any claim made under the NSE by-laws.

Legal Arguments Presented

1. Appellant's Contentions (NSE):

The NSE, represented by its senior counsel, argued that the by-laws and regulations under the SCR Act grant it priority over all other claims, including statutory dues under the EPF Act. The NSE asserted that these by-laws, which are approved by the Securities and Exchange Board of India (SEBI) and have the force of law, ensure a transparent and regulated trading environment to protect investors' interests. The counsel cited the Supreme Court's ruling in Rusoday Securities Ltd. v. National Stock Exchange of India Ltd. to substantiate the claim of the NSE's autonomy and priority.

Furthermore, the NSE argued that the EPF Act, being a general law enacted earlier, cannot override the specific provisions of the SCR Act and its by-laws, which are special laws enacted later with specific objectives. The NSE also argued that the attachment order issued by the Assistant Provident Fund Commissioner was without proper notice or adherence to the procedure under Section 8F of the EPF Act.

2. Respondent's Contentions (EPF Authorities):

The EPF authorities, represented by their counsel, contended that both the EPF Act and the SEBI Act are special enactments for particular purposes. However, the EPF Act, being a statutory legislation enacted by the Central Government, overrides any subordinate legislation, such as the NSE by-laws. The EPF counsel argued that when there is a conflict between statutory legislation and subordinate legislation, the statutory legislation prevails.

Additionally, the respondents argued that the attachment order was in compliance with the EPF Act, which provides for a first charge over the dues. The counsel highlighted that the vesting of assets in the stock exchange, as per the NSE by-laws, is not an absolute transfer of ownership but a limited vesting for the specific purpose of settling claims arising from trading activities.

Court's Analysis and Findings

The Division Bench, comprising Justice R. Suresh Kumar and Justice K. Kumaresh Babu, carefully examined the provisions of the EPF Act and the SCR Act, along with the NSE by-laws. The court observed the following:

1. Validity and Scope of NSE By-Laws:

The court acknowledged that the by-laws and regulations of the NSE have a statutory character under the SCR Act and are designed to protect the interests of investors and maintain market integrity. However, the court noted that these by-laws are essentially subordinate legislation and do not possess the overriding authority of a central statutory enactment such as the EPF Act.

2. Non-Applicability of Priority Clause in NSE By-Laws:

The court held that while the NSE by-laws provide a first and paramount lien for any sums due to the exchange arising from trading transactions, this lien does not extend to statutory claims made by authorities such as the EPF. The claim of the EPF authorities was not incidental to any dealings on the stock exchange, but a statutory claim under a central law, which takes precedence.

3. Effect of Vesting Under NSE By-Laws:

The court clarified that the vesting of assets in the stock exchange under the NSE by-laws does not constitute absolute ownership. Instead, this vesting is limited to the settlement of claims directly related to trading activities and does not nullify statutory claims like those under the EPF Act. The court referred to Supreme Court judgments in Bombay Stock Exchange v. Jaya I. Shah and Bombay Stock Exchange v. V.S. Kandalgaonkar to emphasize that such vesting creates an "animated suspension" of the trading member's ownership but does not negate statutory priorities.

4. Interpretation of Competing Statutory Provisions:

The court noted that when there is a conflict between two laws, the law providing a statutory charge, such as the EPF Act, will prevail over subordinate legislation like the NSE by-laws. Moreover, the EPF Act contains a non-obstante clause giving it overriding effect over other laws in matters concerning EPF dues.

Conclusion

The court dismissed the appeal by the NSE and upheld the order of the learned Single Judge and the attachment order issued by the Assistant Provident Fund Commissioner. The court's decision reinforces the principle that statutory enactments, especially those involving public welfare such as the EPF Act, have precedence over subordinate regulations or by-laws of regulatory bodies.

This judgment is crucial for financial and regulatory entities as it clarifies that statutory claims, particularly those involving public or social welfare, will always hold priority over claims arising from internal regulations or by-laws, even if such regulations have been granted statutory recognition. The case reiterates the supremacy of central statutory legislation over subordinate laws, reflecting the broader public policy goal of protecting workers' rights and securing their dues under the EPF framework.

Implications for Regulatory Practice

The ruling underscores the necessity for stock exchanges and other financial institutions to carefully evaluate the enforceability of their internal rules when they come into conflict with statutory laws.

Regulatory bodies must recognize that their autonomy is limited by the overriding powers of statutory laws, especially those designed to protect public interests.

Key Takeaways

The judgment in National Stock Exchange of India Ltd. v. The Assistant Provident Fund Commissioner and Others serves as a critical precedent for similar cases where the priority of statutory claims is contested against internal rules or by-laws. It highlights the importance of understanding the hierarchy of laws and ensures that statutory protections, especially those related to employee benefits, are upheld against competing financial claims.

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Intervention Petition No.I.V.N.P/35/2024-CBT, EPFO through RPFC-II V/s Mr Indrajit Mukharjee Resolution Professional of First Flight Couriers.

N.B. Adurkar
RPFC-I, Regional Office-Thane (North)

The Intervention Petition was filed by Regional Office-RO Thane (North) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 to intervene in Interlocutory Application (IBC)(PLAN)/10(MB) OF 2024 filed by the Resolution Professional of First Flight Couriers Limited for approval of resolution plan. The Petition was filed on behalf of ten EPFO Field offices RO Thane North, RO Chennai, RO Delhi (South), RO Lucknow, RO Ludhiana, RO Indore, RO Noida, RO Pune I, RO Jaipur and RO Kochi in order to admit and pay amount of Rs.397033618/- towards provident fund dues which are statutory in nature as the same was not considered in the Resolution Plan.

It is very much clear that, the provisions of IBC 2016 do not have any conflict in so far as the provident fund and allied dues of workers are concerned. The proceedings under IBC for reconstruction of debts do not apply to third party properties in possession of the corporate debtor. For recovery of workers PF and allied dues, which are indisputably third-party assets at the hands of the corporate debtor, EPF Act prescribes a separate mechanism. Considering our submissions in the Intervention Petition the Hon'ble NCLT vide its order dated 26.06.2024, allowed our Intervention Petition with the view that EPFO claim requires consideration based upon the proposition settled by the Hon'ble NCLAT. Since the resolution plan does not provide the entire claim of EPFO, the Resolution Plan was remanded back to COC by the Hon'ble NCLT for reconsideration of EPFO claim.

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Supreme Court's Ruling on Condonation of Delay and Certified Copies in NCLT Proceedings Citation: State Bank of India v. India Power Corporation Ltd., 2024 SCC OnLine SC 2731

Sukhman Singh,
ASO (Legal), EPF HQ

On October 9, 2024, the Supreme Court of India delivered a significant judgment in the matter of *State Bank of India v. India Power Corporation Ltd.*, clarifying the treatment of free and paid certified copies of final orders issued by the National Company Law Tribunal (NCLT). This decision is pivotal for practitioners navigating the procedural nuances of the Insolvency and Bankruptcy Code (IBC) and the National Company Law Appellate Tribunal (NCLAT) rules.

Background of the Case

The case arose from an application filed by the State Bank of India (SBI) under Section 7 of the IBC against India Power Corporation Ltd. (IPCL). The NCLT in Hyderabad rejected the application on grounds of maintainability on October 30, 2023. Subsequently, SBI filed an appeal before the NCLAT in Chennai on December 2, 2023, with a delay of three days beyond the statutory 30-day period prescribed under Section 61(2) of the IBC.

In seeking condonation of this delay, SBI argued that it had received a free certified copy of the NCLT's final order only on November 14, 2023. A split decision emerged within the NCLAT, where the Judicial Member opined that a free certified copy did not suffice for the purpose of condoning the delay, while the Technical Member asserted that both types of certified copies should be treated equally.

Supreme Court's Analysis

The Supreme Court, led by Chief Justice D.Y. Chandrachud and Justice Manoj Misra, meticulously examined the provisions of Rule 50 of the NCLT Rules and Rule 22 of the NCLAT Rules. The Court's primary objective was to clarify whether free certified copies could be equated with paid certified copies for the purposes of delay condonation in appeals.

1. **Interpretation of Rules**: The Court noted that Rule 50 explicitly allows for the issuance of free certified copies. It emphasized that the intention behind providing free copies is to ensure accessibility and fairness in the legal process, particularly for parties who may face financial constraints.
2. **Comparison with Previous Jurisprudence**: The Court distinguished this case from the precedent set in *V. Nagarajan v. SKS Ispat and Power Limited*, where it was previously established that both free and paid certified copies are valid for the purposes of Rule 50. The Supreme Court reiterated that a litigant cannot claim ignorance of the limitation period based on the non-application for a certified copy.
3. **Sufficient Cause for Delay**: The Supreme Court found that SBI's delay of three days fell well within the condonable period of 15 days provided under the IBC. The Court highlighted that sufficient cause was demonstrated, given that the free copy was obtained shortly after the NCLT's decision.
4. **Implications of Entry 31**: The judgment also addressed Entry 31 of the Schedule of Fees under the NCLT Rules, which stipulates a fee of ₹5 per page for obtaining certified copies by parties other than those concerned. This provision explicitly excludes "concerned parties" under Rule 50, reinforcing the accessibility of free copies.

The Supreme Court's ruling in *State Bank of India v. India Power Corporation Ltd.* serves as a crucial clarification regarding the treatment of certified copies in insolvency proceedings. By affirming the equal status of free and paid certified copies and providing a clear pathway for the condonation of delays, the Court has enhanced the legal framework surrounding procedural compliance in NCLT and NCLAT matters.

This decision underscores the judiciary's commitment to ensuring that procedural requirements do not become a barrier to justice, particularly for stakeholders involved in insolvency and bankruptcy cases. Legal practitioners and parties engaging with the NCLT and NCLAT must remain cognizant of this ruling, which not only affects current litigation but also sets a precedent for future cases involving similar procedural issues.

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SERVICE MATTERS

Sudesh Kumar Goyal vs The State of Haryana & Others [Civil Appeal No.10861 of 2013, decided on 21st September 2023]

"Resigned Couldn't be Replaced: Supreme Court's Call for Fresh Selection"

C RAMESH,
SECTION SUPERVISOR EPFO VELLORE

The Supreme Court ruled that a candidate who successfully completed the selection process cannot be chosen to fill a vacancy resulting from the resignation of a previously selected candidate. The Apex Court emphasised that a new vacancy is created when a selected candidate joins and subsequently resigns, and this vacancy must be filled through a new selection process.

In May 2007, the Punjab & Haryana High Court issued a notification for the recruitment of 22 officers to the Haryana Superior Judicial Service through direct recruitment from the Bar. Out of these, 14 were for the general category, 5 for the scheduled caste, and 3 for the backward class, in compliance with the Haryana Superior Judicial Service Rules, 2007.

The appellant applied for the position and successfully cleared the written examination and interview, securing the 14th position in the merit list. Despite being among the top 14 candidates in the general category, he was not appointed. The written examination took place in February 2008, followed by interviews in April 2008. The final result, with the appellant at the 14th position, was published on the High Court's website in July 2008. However, only the top 13 candidates in the order of merit were appointed. One of these candidates, Jitender Kumar Sinha, later joined the service but subsequently resigned.

In light of the preceding factual context, the appellant approached the High Court using writ jurisdiction, aiming to secure their appointment to the 14th position designated for a general category candidate. The primary contention was that leaving this position vacant, especially in an arbitrary fashion, was unacceptable. Furthermore, the argument was made that since one of the 13 appointed candidates had resigned after commencing their role, the appellant could have been appropriately placed in that vacancy.

The respondents justified the appellant's non-appointment to the 14th vacancy by explaining the circumstances related to the selection process. The initial notification on May 18, 2007, advertised 22 posts for direct recruitment in the higher judicial service, with 14 reserved for general category candidates. However, only 13 candidates from the general category were appointed. This deviation occurred because five general category candidates, serving as Additional District & Sessions Judges (Fast Track Court) in Haryana, sought regularisation through a writ petition (No. 8587 of 2007). The High Court disposed of this petition on May 30, 2007, directing the candidates to represent their case to the High Court administratively based on *Brij Mohan Lal (1) v. Union of India* (2002) 2 SCC 1.

Responding to the representation, the selection committee recommended the absorption of the five Fast Track Court judges into fresh positions. This recommendation was accepted, and out of the initially advertised 14 general category posts, five were allocated to these officers, leaving nine vacancies to be filled through regular selection. Additionally, during this period, 20 fresh cadre vacancies became available, and it was decided that five of these would be filled by direct recruitment from the Bar (four for the general category and one for the scheduled caste category). Consequently, a decision was made to combine these four general category vacancies with the already advertised ones, resulting in a total of 13 general category vacancies [14 (initially advertised) - 5 (absorbed Fast Track Court judges) = 9 + 4 (additional general category vacancies) = 13]. Therefore, only 13 candidates were appointed to fill these positions. The respondents contended that their actions were not arbitrary in making these appointments based on this explanation.

The Appellant, then, contended that since one of the initially appointed 13 candidates had resigned after joining, their position could have been filled by adjusting the appointment. However, the Supreme Court disagreed, stating that while all initially notified vacancies were filled, a resignation creates a fresh vacancy. The Court emphasised that this new vacancy must be advertised properly, and a new selection process needs to be followed to fill it, aligning with the principles of fairness and transparency.

Finally, in dismissing the appeal, the Court noted that the selection process in question had been set in motion in 2007, and an extensive 16 years had transpired since then. The Court expressed a concern that allowing the selection process to remain active for such an extended period would be unjust and counter to the principles of fairness and efficiency.

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Security Printing & Minting Corporation of India Ltd. vs. Vijay D. Kasbe, 2023, before Hon'ble Supreme Court [AIR 2023 SC 2042]

Animesh Mishra
Addl. CPFC (Pension)
EPF HQ

The Supreme Court of India recently delivered a landmark judgment in the case of *Security Printing & Minting Corporation of India Ltd. & Ors. vs. Vijay D. Kasbe & Ors.,* shedding light on the entitlements of supervisors to Double Over Time Allowance (OTA). The judgment has far-reaching implications for labour laws and management practices.

Background: The case traces its roots to the year 1988 when a group of eight individuals working as Supervisors in the Currency Note Press, Nashik, filed a writ petition seeking overtime allowance. Over the years, the matter underwent various twists and turns, including dismissals by the Central Administrative Tribunal and subsequent remands by the High Court. The Supreme Court's recent decision is the culmination of this prolonged legal battle.

Key Issues: The central question before the court was whether individuals employed as Supervisors are entitled to double over Time Allowance under Section 59(1) of the Factories Act, 1948. The Factories Act regulates the conditions of employment in factories, and the interpretation of its provisions played a pivotal role in the court's decision.

Historical Context: The Ministry of Finance, Government of India, had production units, including Security Printing Presses, under its control until 2005. In 2006, the Security Printing & Minting Corporation of India Ltd. was established to manage these units. The transfer of management brought forth various litigations, including the one concerning overtime allowances for Supervisors.

Legal Arguments: The appellants contended that the Supervisors, enjoying higher scales of pay, are not entitled to overtime allowances as extended to workers. Additionally, they argued that the State Government, under Section 64(1) of the Factories Act, had the power to make rules exempting certain categories of workers, including Supervisors.

The respondents emphasized that the supervisory nature of the work should not disqualify individuals from claiming overtime benefits. They argued that the State's rules exempting Supervisors did not apply to those required to perform manual labour or clerical work as part of their duties.

Tribunal's Divergent Findings: One of the intriguing aspects of the case was the Central Administrative Tribunal's contradictory findings in separate sets of cases involving similar circumstances. The tribunal reached opposite conclusions regarding whether the employees were performing manual labour or clerical work as part of their regular duties.

Supreme Court's Analysis: The Supreme Court meticulously analysed the legislative framework, statutory rules, and factual aspects. It addressed the distinction between employment in a factory and employment in government service, emphasizing that individuals in public service, including Supervisors, are subject to different conditions of employment.

Ruling and Implications: The Supreme Court ruled in favour of the appellants, setting aside the High Court's order. The judgment reaffirms the significance of statutory rules governing conditions of service in public employment. The court highlighted that individuals employed in government service cannot claim benefits *dehors* the statutory rules and emphasized the unique nature of public service.

Conclusion: The *Security Printing & Minting Corporation* judgment provides clarity on the entitlements of Supervisors to overtime allowances, establishing a precedent for similar cases. It underscores the importance of considering the distinct parameters applicable to different categories of employment, particularly the nuanced conditions in public service.

This landmark decision is likely to influence future interpretations of labour laws and service conditions, ensuring a careful examination of statutory rules and employment contexts in legal proceedings.

Civil Appeal No. 822 OF 2023 Ashok Ram Parhad v. State of Maharashtra, 2023 AIR 2023 SC 1591

Siddharth Singh
RPFC-I CAIU
EPF HQ

The recent judgment by the Supreme Court of India in the case of Ashok Ram Parhad vs The State Of Maharashtra, delves into the intricacies of inter se seniority disputes between direct recruits and promotees. The case revolves around the appointment to the position of Assistant Conservator of Forest (ACF) in the Maharashtra Forest Service and the subsequent implications on the seniority hierarchy.

Background: The recruitment for the ACF post involved two methods: nomination (direct appointment) and promotion. Direct recruits undergo a specific training regimen, while promotees assume their roles immediately after promotion without the need for such training. The dispute arose when appellants, appointed through nomination in 2016, challenged the seniority list against directly promoted individuals in 2014.

Litigation History: The Maharashtra Administrative Tribunal initially ruled in favour of the appellants, asserting that the appellants should be considered for appointment from the commencement of their training in 2014. The Tribunal rejected the argument that the 1965 Rules, which referred to training eligibility, still held relevance.

The government, accepting the Tribunal's judgment, issued a resolution in 2018 recognizing successful completion of training as regular service from the training's inception date. However, this triggered a fresh challenge from directly promoted individuals (respondents 4 to 9), who claimed that they were appointed as ACF before the appellants but were shown as juniors in the seniority list.

Legal Analysis: The critical legal question revolved around the interpretation of Rule 2 of the 1984 Rules, which explicitly stated that the period spent on training and probation would not be counted towards the requisite period of service for promotion to the position of Divisional Forest Officer (DFO). The appellants argued that subsequent government resolutions nullified the relevance of this rule.

The High Court upheld the significance of Rule 2 of the 1984 Rules, emphasizing those government resolutions could not override statutory rules. It ruled that while training could be considered for salary purposes, it should not impact seniority, particularly concerning promotion to the post of DFO.

Supreme Court Decision: The Supreme Court endorsed the High Court's reasoning, emphasizing the clarity of the statutory rules. It reaffirmed that government resolutions could not supersede rules framed under Article 309 of the Constitution. The Proviso to Rule 2 of the 1984 Rules, excluding training and probation periods for seniority calculations, was deemed pivotal in determining the period of service.

Conclusion: The judgment in the Ashok Ram Parhad case provides clarity on the hierarchical considerations in inter se seniority disputes, emphasizing the supremacy of statutory rules over administrative resolutions. It serves as a benchmark for future cases dealing with similar disputes and underscores the importance of precise rule interpretation in the realm of public service appointments.

SLP (C) NO. 10499 OF 2022, Ex Const/ Dvr Mukesh Kumar Raigar vs Union Of India before Hon'ble Supreme Court of India

Uttam Prakash
RPFC-I Exemption
EPF HQ

In a recent judgment by the Supreme Court of India, the case of Ex-Const/DVR Mukesh Kumar Raigar vs. Union of India sheds light on the crucial intersection of truthfulness in information provided during the recruitment process and the maintenance of discipline in a disciplined force. The judgment, authored by Justice Bela M. Trivedi, with Justice Ajay Rastogi on the bench, delves into the petitioner's appointment as a constable in the Central Industrial Security Force (CISF), disciplinary proceedings, and his subsequent removal from service.

Background: Mukesh Kumar Raigar, the petitioner, was appointed as a constable in the CISF in 2007. However, in 2009, he received a notice of charge alleging that he had suppressed information regarding his involvement in a criminal case during the character verification process. The case involved charges under sections 323, 324, and 341 of the Indian Penal Code, and an FIR was registered against him in 2003. Disciplinary proceedings were initiated against Raigar, who accepted his mistake, leading to a reduction in pay as a penalty.

Key Events: The case took a turn in 2009 when the Deputy Inspector General *suo motu* took cognizance of the matter, leading to a fresh departmental inquiry against Raigar. This inquiry resulted in his removal from service in 2010. Raigar pursued appeals and petitions, ultimately reaching the High Court of Judicature for Rajasthan, where a Single Bench set aside the removal order, directing the petitioner's reinstatement in 2018.

However, the Division Bench overturned the Single Bench's decision in 2021, upholding the removal order. The Supreme Court, in its recent judgment, supported the Division Bench's decision, emphasizing the principles laid down in previous cases such as Avtar Singh and Satish Chandra Yadav.

Legal Principles Emphasized: The judgment highlights key legal principles, primarily drawn from the Avtar Singh case:

Truthfulness in Information: Candidates must provide accurate information regarding their criminal history during the recruitment process.

Employer's Discretion: The employer has the discretion to consider antecedents, even if a candidate truthfully discloses a concluded criminal case. Acquittal does not automatically entitle a candidate to appointment.

Suppression and Misconduct: Suppression of material information in the verification form, especially related to arrest, prosecution, or conviction, constitutes misconduct.

Conclusion: The Supreme Court's decision in Ex-Const/DVR Mukesh Kumar Raigar vs. Union of India reinforces the significance of truthfulness in the recruitment process and the authority's discretion to consider antecedents. The judgment underscores the limited scope of judicial review in disciplinary matters and upholds the principle that the court's role is to ensure fairness in the decision-making process. This case serves as a noteworthy precedent for cases involving the intersection of criminal history disclosure, discipline, and employment in disciplined forces.

Civil Appeal No. 7935 OF 2023 (SLP (C) No. 33423 of 2018, Ram Lal vs State of Rajasthan & Ors. before Hon'ble Supreme Court

Court Can Quash Disciplinary Proceedings Considering Acquittal in Criminal case on Same Charges : Supreme Court

Abhishek Mishra
ASO (Legal)
EPF HQ

The Supreme Court of India, in Civil Appeal No. 7935 of 2023, provided a comprehensive analysis of the case involving Ram Lal, a constable with the Rajasthan Armed Constabulary. The central issue revolved around allegations that Ram Lal had tampered with his date of birth in official documents, leading to parallel criminal and departmental proceedings.

Background:

Ram Lal's career came under scrutiny when, in 2002, criminal charges were filed against him for altering his date of birth in his 8th standard marksheet. Concurrently, a departmental inquiry was initiated in 2003, accusing him of fraudulent practices to secure employment. The allegations were specifically related to the alteration of the date of birth to meet eligibility criteria during the recruitment process.

Departmental Inquiry:

The disciplinary proceedings resulted in Ram Lal's dismissal from service in 2004, based on findings that he had altered his date of birth. The appellate authority upheld this decision, and subsequent attempts for a review were unsuccessful. The Supreme Court examined the legality and justification of the dismissal in light of the evidence presented during the departmental inquiry.

Criminal Trial:

Simultaneously, Ram Lal faced a criminal trial. The trial court convicted him under Section 420 of the IPC, but the appellate judge overturned this decision in 2007. The acquittal was grounded in the failure of the prosecution to substantiate the charges, with a specific emphasis on the date of birth mentioned in the original 8th class marksheet.

Issues Considered by the Supreme Court:

The Supreme Court addressed two primary questions: the justification of Ram Lal's dismissal based on the departmental inquiry and the impact of his acquittal in the criminal trial on the disciplinary action. The court delved into the legal principles governing such cases, highlighting the limited scope of review and the discretionary power of the court to intervene when findings appear unjust.

Legal Position Considered:

The judgment considered established legal principles, emphasizing the court's restricted authority in reviewing disciplinary decisions. It underscored that an acquittal in a criminal court does not automatically translate into a right to reinstatement. The court clarified its discretionary power to grant relief in cases where disciplinary findings are perceived as unjust.

Analysis of Departmental Inquiry:

The court scrutinized the evidence presented during the departmental inquiry, with a focus on the 8th class marksheet. It emphasized the significance of Constable Raj Singh's testimony, which affirmed the absence of alterations in the marksheet. The court identified flaws in the inquiry process and the failure to consider crucial evidence, raising concerns about the validity of the dismissal.

Effect of Acquittal:

The judgment explored the implications of Ram Lal's acquittal on the disciplinary proceedings. It highlighted that the appellate judge in the criminal trial found the prosecution's failure to prove the charges. The court concluded that the charges in both proceedings were not only similar but identical, making it untenable for the disciplinary actions to stand against the backdrop of the acquittal.

Decision:

In a decisive conclusion, the Supreme Court quashed the orders of dismissal and supported Ram Lal's plea for reinstatement. The court directed the restoration of Ram Lal to his position with all consequential benefits, including 50% of backwages.

Conclusion:

The judgment serves as a legal precedent, emphasizing the importance of consistent evidence and fair assessments in both criminal and disciplinary proceedings. It upholds the court's authority to intervene when disciplinary findings are perceived as unjust, striking a balance between the principles of justice and administrative discipline. The comprehensive analysis provides clarity on legal principles governing such cases and ensures a nuanced understanding of the complex interplay between criminal and departmental proceedings.

Civil Appeal No. 2164-2172 of 2023, Tajvir Singh Sodhi & Ors vs The State of Jammu Kashmir & Ors.

A candidate, who agreed to the interview process without any objection or complaint, cannot question the selection process later, simply because he was unsuccessful: Supreme Court

Pardeep Chauhan,
Senior SSA
RO Chandigarh

Brief facts of the case:

The Jammu and Kashmir Subordinate Services Selection and Recruitment Board invited applications for filling up vacancies for 72 posts of drug inspectors. After following the due selection process, the Board published and recommended the list of 64 candidates as drug inspectors and the list of successful candidates was further submitted before the Health Department for issuance of appointment orders after verifying all the original documents.

Some candidates who remained unsuccessful in selection process filed writ petitions before the Jammu and Kashmir High Court, with a prayer to quash the selection of 56 out of total number of selected candidates and direct the authorities to appoint petitioners as drug inspectors.

Grounds on which selection process was challenged:

i. Quorum of the selection committee was not complete, as the Chairman of the selection, who was the member of the committee, did not participate in the interview process.
ii. The selection process was carried out in an arbitrary manner by the authorities. They awarded 10 marks to the candidates who had a post-graduation degree and gave them either 18 or 20 marks out of 20 in viva-voce. This was unfair to the other candidates who did not have a post-graduation degree.
iii. Expert member of the selection committee was not from the field of pharmacy, the authorities brought a member who had MBBS qualification.

On the identical grounds as above three more writ petitions were filed. All these petitions were allowed by the single judge. Thereafter, appeals were filed before the Division Bench. The Division Bench also quashed the selection list published by the Board and gave liberty to the Board to constitute a selection committee to conduct the fresh interviews of all the candidates who had appeared before it in accordance with the law. The Division Bench further directed that the exercise if undertaken, should be completed within six month and till such time the selected candidate appointed may be permitted to continue in the said posts to avoid administrative problems. Aggrieved by the common judgment passed by the Division Bench, the appeals were filed before the Supreme Court by the various stake holders.

Supreme Court's analysis and conclusion:

Upon hearing the submissions made by both the parties and after referring to its own precedence the Supreme Court observed that courts, while exercising the power of judicial review cannot step into the shoes of Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the viva-voce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates

appearing before the selection committee/interview Board should be best left to the members of the committee.

The Supreme Court also noted that the candidates, who participated in the selection process without raising any objection or complaint, cannot question it after being declared unsuccessful. The candidates cannot accept and reject the same thing at the same time. That is, a candidate cannot claim that the interview process was unfair or that there was some flaw in the process just because he did not like the outcome of the selection process.

Further, regarding the contention of the petitioners that a person with a qualification in the field of pharmacy would have been better suited on the panel, the court observed that the selection process is governed by the 1992 Rules made by the General Administration Department of the Government of Jammu and Kashmir. Rule 9(iii) provides that the Chairman may, if he feels necessary associate with the Selection Committee and Expert/Specialist in the discipline in which recruitment is to be made. The use of word 'may' would indicate that the Chairman of the Board has discretion in this regard and there is no mandatory requirements to appoint on the selection panel a person having a qualification in the pharmacy. To this extent we affirm the findings of Single and Division Bench. The court did not find any force in the arguments raised by the counsel for the respondents in this regard.

The Hon'ble Supreme Court quashed the verdicts of the Single Judge and Division Bench of the High court, based on the above stance.

Civil Appeal No. 2471 OF 2023 (SLP (C) No. 6185/2020); April 11, 2023, The Director (Admn. and HR) KPTCL & Ors. versus C.P. Mundinamani & Ors

"Govt Employees Can't Be Denied Annual Increment Merely Because They Retired The Next Day Of Earning It"

Ajeet Kumar,
ACC (Legal)
EPF HQ

The Supreme Court of India, in Civil Appeal No. 2471 of 2023, tackled the contentious issue of denying annual increments to government employees on the eve of their retirement.

The case hinged on the interpretation of Regulation 40(1) of the Karnataka Electricity Board Employees Service Regulations, 1997, which stipulates that an increment accrues from the day following its earning. The employees, having completed a year of service, earned an annual increment a day before their retirement, only to face denial by the management citing Regulation 40(1).

The High Court of Karnataka, in a pivotal decision, quashed the Single Judge's ruling and directed the management to award the annual increment.

Before the Supreme Court, the appellants challenged this decision, asserting that the Andhra Pradesh High Court's precedent, on which the Karnataka High Court relied, had been subsequently overruled. The appellants also highlighted the divergent views among various High Courts on the matter. They contended that annual increments serve as incentives and, thus, employees not in service due to retirement should be ineligible.

The Supreme Court, in a meticulous analysis, dismissed the notion that annual increments purely function as incentives, underscoring their purpose as rewards for past service with good conduct.

Expressing concerns over the arbitrariness of denying an already earned increment, the judgment underscored the progressive nature of appointments and the accrual of increments as a recognition of completing a specified period of service with diligence.

Ultimately, the Court upheld the High Court's decision, dismissing the appeal and affirming the grant of one annual increment to employees who had earned it before retirement.

The judgment, drawing upon decisions from various High Courts, aligns with the progressive stance of the Karnataka High Court in recognizing the entitlement of employees to annual increments earned before retirement.

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Crl.MC NO. 1071 OF 2022 C. Surendranath v. State of Kerala- "Mere Conduct & Action Contrary To Departmental Rules By A Public Servant Is Not Criminal Misconduct"

Abhishek Mishra,
ASO Legal
EPF HQ

The Kerala High Court has held that 'dishonest intention' is the crux for constituting an offence under Section 13 (1)(d) of the Prevention of Corruption Act for proving criminal misconduct by public servants."Dishonest intention is sine qua non to attract the offence punishable under Section 13(1)(d) of the Act.

Background:- The High Court of Kerala at Ernakulam addressed Criminal Miscellaneous Case (Crl.M.C) No. 1071 of 2022. The case involved C. Surendranath and Hari Achutha Varrier, accused of alleged conspiracy and criminal misconduct in the tender process for manual dredging and sale of port sand in Kasaragod.

The accused, both public servants in port-related roles, were part of the tender assessment team overseeing the process for the years 2013 and 2014. The prosecution alleged irregularities, favoritism towards specific Cooperative Societies, and violations of guidelines, leading to charges under the Prevention of Corruption Act and IPC.

The court, in its detailed analysis, examined the crucial element of "dishonest intention" required under Section 13(1)(d) of the Prevention of Corruption Act. Emphasizing the necessity of proving corruption rather than mere procedural violations, the court noted that the prosecution failed to establish any dishonest intent on the part of the accused.

Drawing on legal precedents, the court asserted that criminal conspiracy must be proved by either direct or circumstantial evidence. The court further clarified that irregularities in the tender process do not necessarily translate into criminal misconduct, emphasizing the need for *mens rea*.

Consequently, the court exercised its power under Article 226 of the Constitution of India, quashing the FIR, Final Report, and all further proceedings against the accused. The judgment, grounded in the principles of fairness and justice, highlights the importance of demonstrating corrupt intent in cases involving public servants and tender irregularities.

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Compassionate appointment – Granting of appointment of appointment should be rule – Denying it is an exemption – Like fulfilling unwritten will of deceased govt. servant.

[Madras High court in W.P. no 3623 of 2021 vide judgement dated 18.01.2024 in the case of Ms. M. Priya vs Canara bank and others.]

B Andrew Prabhu
RPFC-I (Legal)
EPF HQ

The Written petition was filed under article 226 of the constitution of India to exclude the married daughter from the definition of "dependent family member /wholly dependent daughter" for the purpose of getting compassionate appointment under the scheme for compassionate appointment of the first respondent bank.

Hon'ble High court after having considered the various arguments and rulings laid the following rules.

An act of Compassion includes both the elements of sympathy and empathy. Sympathy is an immediate emotional response to a fact situation like some one's loss. It does not stay longer. But empathy demands the intellectual involvement of the respondents, which is called 'understanding'.

Through empathy one tries to understand the situation by placing himself in the shoes of an affected person. Empathy prompts action and stays until the affected person recovers and gets back to normalcy. So the authorities concerned need to consider the requests for compassionate appointments with both sympathy and empathy. The matters of compassion not only requires an understanding by getting into the shoes of the applicant but also in the shoes of the deceased government servant, like how the deceased would have wished to settle his dependents in life, if he was alive.

So providing compassionate appointment is more or like fulfilling an unwritten Will of the deceased government servant.

Hence in the matters of compassionate appointment granting the appointment can be the rule and denying it may be an exception. the aspect of economical dependency cannot always be measured on a scale of bare minimum standard. Because the so called bare minimum is again a complex issue.

What is luxury for one person can be a bare minimum for an another person. bare minimum standard it should be in terms of how an employee was placed in society and what standard of life that employee had provided to his dependents with the salary he earned. So the employer cannot expect that the dependent applicant starve for food or live without a roof for getting a compassionate appointment.

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Termination Of Services Without Disciplinary Enquiry Violates Principles Of Natural Justice [SLP (C) No(s). 8788-8789 of 2023 Sandeep Kumar vs. GB Pant Institute of Engineering and Technology & Ors.]

Navendu Rai
RPFC-I (Legal)
EPF HQ

In a recent landmark decision, the Supreme Court of India reaffirmed the fundamental principles of natural justice in the realm of employment law. This case sheds light on the significance of procedural fairness and due process in employment terminations.

Background: Sandeep Kumar, the appellant, served as the Registrar at the prestigious GB Pant Institute of Engineering and Technology. However, his tenure was abruptly terminated by the Institute without the conduct of a disciplinary enquiry. Dissatisfied with this decision, Kumar filed a writ petition challenging his termination, leading to a legal battle that ultimately reached the highest judicial authority in the country.

Key Legal Proceedings: The Uttarakhand High Court initially dismissed Kumar's writ petition, citing his failure to produce crucial minutes of a Board of Governors meeting. However, upon appeal, the Supreme Court scrutinized the evidence presented and rendered a groundbreaking judgment.

Supreme Court's Analysis: The Supreme Court meticulously examined the facts of the case and identified several critical discrepancies. Firstly, it found that the minutes of the Board meeting, produced during the appeal process, contradicted the High Court's conclusion. These minutes explicitly approved Kumar's appointment as Registrar, undermining the basis of his termination. Secondly, the Court observed that the termination letter cited concerns regarding Kumar's qualifications, which were refuted by the Board meeting minutes. Moreover, the absence of any disciplinary enquiry before the termination raised serious procedural concerns.

Legal Rationale: In its judgment, the Supreme Court underscored the cardinal principles of natural justice and due process. It emphasized that the termination of employment without affording the employee an opportunity for a fair hearing violates these foundational principles. Moreover, the Court reiterated the importance of evidence-based decision-making, highlighting the need for coherence between allegations and supporting documentation.

Implications and Precedent: The Sandeep Kumar case sets a significant precedent for employment law in India. It serves as a cautionary reminder to employers regarding the importance of procedural fairness in disciplinary actions. Furthermore, the judgment reaffirms the judiciary's commitment to upholding the rights of employees and ensuring accountability in employment practices.

In a legal landscape characterized by evolving norms and complex challenges, the Sandeep Kumar case stands as a beacon of justice and fairness. By prioritizing the principles of natural justice, the Supreme Court has not only vindicated an individual's rights but also reaffirmed the foundational values of the Indian legal system. As employers navigate the intricacies of employment relations, this judgment serves as a guiding light, illuminating the path towards equitable and just practices.

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Employer Should Not Suspend Employee On Verge Of Retirement, Will Not Be In Public Interest

[Madras High Court, W.P.(MD) No.26571 of 2022 K Saravanan v Joint Director of School Education and Another]

B Andrew Prabhu
RPFC-I (Legal)
EPF HQ

The Madras High Court recently delivered a significant judgment emphasizing the protection of employees' rights at the twilight of their careers. In the case of K. Saravanan vs. The Joint Director of School Education (W.P.(MD) No.26571 of 2022), Justice R.N. Manjula ruled against the suspension of an employee on the verge of retirement, reinforcing the principle that such actions are not in the public interest.

Case Overview

K. Saravanan, the petitioner, was placed under suspension on the exact date of his retirement, October 31, 2022, based on allegations that he had secured his employment through misrepresentation. The charge memo was issued subsequent to the suspension, on November 10, 2022. The petitioner challenged these actions, seeking the quashing of the suspension and the charge memo, and requested to be allowed to retire with all attendant benefits.

Court's Findings

Justice Manjula meticulously examined the circumstances and the timing of the suspension and the charge memo. The Court noted that the petitioner had served since 1989 without any disciplinary issues until the date of his retirement. The allegations against him, relating to the compassionate appointment obtained by allegedly suppressing the fact that his mother was in government service, were raised only at the very end of his tenure, based on complaints from third parties.

The Court highlighted several key points:

Timing and Fairness: Suspending an employee on the date of retirement or initiating disciplinary proceedings after a long delay is inherently unfair and prejudicial.

Precedents: Citing the Supreme Court's decision in P.V. Mahadevan vs. Managing Director, Tamil Nadu Housing Board (2005), the Court reiterated that protracted disciplinary proceedings are detrimental to an employee's mental well-being and are against public interest.

Government Guidelines: The Court referenced the Tamil Nadu Government's guidelines (G.O.(Ms) No.144) which explicitly discourage the suspension of employees on the verge of retirement, emphasizing that any necessary disciplinary actions should be taken well in advance of the retirement date.

Judgment

The Court declared the suspension order and the subsequent charge memo illegal and set them aside. It directed the respondents to allow the petitioner to retire with effect from October 31, 2022, and to release his terminal benefits within six weeks.

Implications

This ruling has profound implications for employers, particularly in the public sector:

Timeliness in Disciplinary Actions: Employers must ensure that any disciplinary actions are initiated and concluded well before an employee's retirement date.

Adherence to Guidelines: Compliance with established guidelines, such as G.O.(Ms) No.144, is crucial to prevent legal repercussions and ensure fair treatment of employees.

Employee Morale and Public Interest: Protecting the rights of employees at the end of their careers upholds the integrity of the public service and maintains employee morale.

Conclusion

The Madras High Court's decision in K. Saravanan vs. The Joint Director of School Education serves as a critical reminder of the need for timely and fair disciplinary procedures. It underscores the importance of respecting employees' rights as they approach retirement, ensuring that their long years of service are honored without undue prejudice or last-minute punitive actions. This ruling not only protects individual employees but also reinforces the principles of justice and fairness in public administration.

For entities like the Employees' Provident Fund Organisation (EPFO), this judgment emphasizes the necessity of upholding procedural fairness and respecting the rights of employees throughout their tenure, especially as they near retirement. The EPFO, in its role as a custodian of employees' retirement benefits, must advocate for and adhere to these legal standards to foster trust and integrity within the workforce.

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No Recovery Permissible From Retiral Benefits Of Employee Holding Class-III Post On Grounds Of Excess Payment.: Manipur High Court

[Manipur High court in K. Yangla v. State of Manipur., 2024 SCC OnLine Mani 134, decided on 24-04-2024]

Navendu Rai
RPFC-I (Legal)
EPF HQ

The Manipur High Court recently made a significant ruling regarding retirement benefits in the case of K. Yangla v. State of Manipur. Here's a breakdown of the key points:

Background:

The petitioner, K. Yangla, served as an Assistant Sub-Inspector of Police in the Manipur Police Department.

Upon retirement, the Office of the Accountant General (A&E), Manipur, issued a gratuity payment order specifying a retirement gratuity but also indicating deductions due to alleged overpayment of pay and allowances.

Legal Dispute:

The central issue was whether it was legally acceptable to deduct purported overpayments from retirement benefits owed to the petitioner.

Court's Analysis and Decision:

The court found no evidence supporting the claim of overpayment based on the incorrect fixation of pay. Even if there were discrepancies, the evidence suggested the petitioner's pay was correctly set, and the argument for overpayment was baseless.

Despite an order to withhold the petitioner's increment for three years, the department released his full pay and allowances, resulting in alleged overpayment.

The court emphasized that retirement benefits are hard-earned and not gifts. Even if the petitioner consented to deductions, it didn't excuse unjust actions by authorities.

The court held that the order to deduct from the petitioner's retirement gratuity lacked legal grounds and was quashed. The deducted amount was directed to be released to the petitioner within two months.

This ruling underscores the importance of protecting retirement benefits and ensuring that deductions are legally justified. It reaffirms the principle that retirement benefits are earned through dedicated service and should not be subject to arbitrary deductions without proper legal basis.

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Person Has No Right To Be Promoted But Has Fundamental Right To Be Considered For Promotion:

[Calcutta High Court, WPA 24009 of 2019, Dr. Tapas Kumar Mandal v. Union of India & Ors]

Banoth Prem Sai Nayak
ASO (Legal)
EPF HQ

The recent case of Dr. Tapas Kumar Mandal v. Union of India & Ors. before the Calcutta High Court provides valuable insights into the legal intricacies surrounding promotion disputes.

Background: Dr. Tapas Kumar Mandal, a former Associate Professor, approached the Calcutta High Court seeking promotion and associated benefits. His promotion process was stalled due to ongoing disciplinary proceedings, which persisted even after his retirement. The case raised pertinent questions regarding the rights of employees in promotion disputes, the authority of employers in assessing merit, and the role of legal proceedings in such matters.

Contentions of the Parties: The petitioner, Dr. Mandal, argued for the acceptance of the Departmental Promotion Committee's recommendation for his promotion and the release of consequential benefits. Conversely, the respondents disputed Dr. Mandal's promotion claim, citing legal complexities and ongoing disciplinary proceedings as valid reasons for withholding promotion benefits.

Court's Analysis and Judgment: The Court, in its analysis, underscored the employer's exclusive authority to assess an employee's merits for promotion. It emphasized that promotion serves as an incentive for employees to excel and contribute to institutional development. However, the Court acknowledged the validity of withholding promotion due to ongoing legal issues, such as pending disciplinary proceedings. In Dr. Mandal's case, the Court found that his promotion was rightfully denied due to legal complexities and his subsequent superannuation.

The judgment in Dr. Tapas Kumar Mandal v. Union of India & Ors. offers valuable guidance for employers and employees navigating promotion disputes. It highlights the importance of legal compliance and the employer's discretion in promotion decisions. Moreover, it underscores the need for employees to understand their rights and legal recourse in such matters, especially concerning ongoing legal proceedings.

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Central Administrative Tribunal Decision on Medical Reimbursement Case

OA No. 170/144/2023, CAT, Bengaluru.

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Introduction

On January 4, 2024, the Central Administrative Tribunal in Bangalore delivered a decision regarding a dispute over medical reimbursement between a retired Accounts Officer, Mr. H.V. Ravi Kumar, and the Employees Provident Fund Organisation. The OA No. 170/00144/2023, involved a claim for reimbursement of medical expenses that were only partially covered by the EPFO. This article provides an overview of the case, the arguments presented, and the tribunal's final ruling.

Background

Mr. H.V. Ravi Kumar, a retired Accounts Officer from the EPFO, sought reimbursement for medical expenses incurred during his treatment for pneumonia at Aster Hospital in Hebbal, Bangalore. The total bill amounted to ₹4,69,409, but the EPFO reimbursed only ₹1,27,877, citing CGHS (Central Government Health Scheme) rates. Dissatisfied with the partial payment, Mr. H. V. Ravi Kumar filed an application with the CAT seeking the remaining amount of ₹3,32,380 along with interest and costs.

Applicant Arguments

The applicant’s counsel argued that the EPFO should honour the entire claim as it had done for a previous treatment at Fortis Hospital and cited judgments from the Karnataka High Court and the Delhi High Court to support their claim that the EPFO was obligated to reimburse the full amount, particularly since the applicant held a CGHS card. The counsel also contended that the applicant's previous full reimbursement set a precedent, and the EPFO's refusal to cover the full amount for the Aster Hospital treatment was inconsistent and unfair.

Respondent Defense

The counsel of EPFO, argued that the reimbursement was processed according to the CGHS rates, which are standard for such claims. The counsel pointed out that Mr. H. V. Ravi Kumar had not presented his CGHS card at the time of billing at Aster Hospital, choosing instead to self-sponsor his treatment. The hospital, therefore, charged non-CGHS rates, which were higher. The EPFO processed the reimbursement at CGHS rates as per policy, leading to the partial payment. The respondent further argued that without the CGHS card being used during billing, the applicant was not entitled to full reimbursement at the higher rates charged.

Tribunal's Findings

The tribunal, comprising Justice S. Sujatha and Mr. Rakesh Kumar Gupta, examined the arguments and evidence presented. They noted that although Aster Hospital is an empanelled CGHS hospital, Mr. H. V. Ravi Kumar did not follow the necessary procedure of presenting his CGHS card at the time of billing. This procedural lapse led to higher charges being applied, which were not fully reimbursable under CGHS rules.

The tribunal referenced an email from Aster Hospital dated March 2, 2023, confirming that Mr. H. V. Ravi Kumar did not use his CGHS card and had agreed to self-sponsor his treatment. This was a key factor in the decision, as the billing would have been processed differently had the CGHS card been used.

Conclusion

In its decision, the CAT dismissed Mr. H. V. Ravi Kumar application on 04.01.2024, stating that he was not entitled to additional reimbursement beyond the CGHS rates already paid. The tribunal upheld the EPFO's adherence to CGHS rules and found no fault in the partial reimbursement. This case underscores the importance of following established procedures when seeking medical reimbursements under government schemes.

The tribunal's decision highlights that while emergency treatments and procedural nuances can complicate reimbursement processes, adherence to protocol is crucial. The ruling also reinforces the principle that holding a CGHS card is not sufficient; it must be actively used in the billing process to avail full benefits.

Writers' opinion: This article summarizes the CAT's decision on the medical reimbursement case, providing insights into the legal and procedural aspects of such disputes. For individuals and organizations alike, understanding these details is essential to navigating similar situations effectively.

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Letters Patent Appeal (LPA) No. 213 of 2023 in the Gujarat High Court Babubhai Jethabhai Patel vs. Registrar General & Ors.

"Employees Have Right To Be Promptly Informed Of Decisions Affecting Their Service Benefits To Enable Timely Recourse: Gujarat High Court."

B Andrew Prabhu
RPFC-I (Legal) EPF HQ

In the case of Babubhai Jethabhai Patel vs. Registrar General & Ors., the appellant, Babubhai Jethabhai Patel, filed a Letters Patent Appeal (LPA) No. 213 of 2023 in the Gujarat High Court against the judgment dated June 29, 2022, by a single judge, which dismissed his writ petition challenging the denial of promotion to the post of Principal Private Secretary, Class-I.

Employment History

Babubhai Jethabhai Patel joined the service as an English Stenographer Grade-II on November 10, 1978, and was later promoted to English Stenographer Grade-I on May 11, 1998. He served in the Vadodara District Court and subsequently at the District Court, Chotta Udepur, established from December 24, 2016. He retired on July 31, 2013.

Issue of Promotion Denial

The controversy began with an order dated October 11, 2017, by the Principal District Judge, which promoted other employees to the cadre of Stenographer Grade-I (Class-I) but did not promote Patel. The order cited a letter from the High Court dated February 7, 2017, which stated that Patel was not fit for promotion due to adverse remarks in his Confidential Report for the period from May 18, 2012, to March 31, 2013, and his Merit-cum-Efficiency Report for the last five years being average.

Representation and Legal Proceedings

Patel made a representation to the Registrar General, High Court of Gujarat, on November 8, 2017, arguing that he was never communicated the adverse remarks. His representation was filed by the High Court and he received this decision through a communication dated December 23, 2017. Patel filed an application under the Right to Information Act, 2005, to obtain his Confidential Reports, revealing that he had not been communicated adverse entries, which formed the basis for the denial of promotion.

Patel then approached the High Court with a writ petition, which was dismissed by the learned Single Judge. Consequently, he filed the present appeal.

Court's Analysis

The division bench of the High Court, comprising Honourable Mr. Justice A.S. Supehia and Honourable Mrs. Justice Mauna M. Bhatt, admitted the appeal and noted several critical points:

1. **Eligibility and Retirement:** Patel became eligible for promotion on May 12, 2013, and retired on July 31, 2013. The promotion exercise took place post his retirement.
2. **Communication of Adverse Remarks:** The adverse remarks and reasons for denial of promotion were communicated to Patel for the first time on October 11, 2017, well after his retirement. This communication included a letter from the Registrar General, dated February 7, 2014.

3. **Legal Precedents:** Patel's counsel relied on the Supreme Court judgment in Prabhu Dayal Khandelwal vs. Chairman, Union Public Service Commission and Ors., which held that promotions cannot be denied based on uncommunicated adverse entries in Confidential Reports.
4. **Delay and Lack of Communication:** The court observed that there was no explanation for the delay in communicating the adverse remarks to Patel. It was also noted that the Confidential Reports for the last five years, barring the disputed period, were found to be 'Good' by the Principal District Judge, Vadodara.

Court's Decision

The court found that the reasons provided for denying Patel's promotion were not tenable in law, as they were based on uncommunicated adverse entries and an arbitrary assessment. The division bench allowed the appeal, setting aside the decision of the single judge and directed that Patel be considered for the promotion to Principal Private Secretary, Class-I, posthumously.

Conclusion

The case underscores the importance of timely and proper communication of adverse entries in Confidential Reports and adherence to legal principles in considering promotions. The High Court’s decision reinforces that employees cannot be penalized based on uncommunicated or arbitrarily assessed adverse entries, ensuring fair treatment and transparency in promotional decisions

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Civil Appeal No. 6977 Of 2015, Bihar State Electricity Board And Others Vs Dharamdeo Das Before Hon'Ble Supreme Court

"Promotion Effective From Date Of Grant, Not When Vacancy Is Created: Supreme Court"

Navendu Rai,
RPFC-I (Legal) EPF HQ

In a significant judgment that reinforces the procedural integrity of promotions within government organizations, the Supreme Court of India recently adjudicated on an appeal filed by the Bihar State Electricity Board against an employee who sought retrospective promotion. The Court reaffirmed the legal principle that a promotion shall be effective from the date it is granted and not from the date a vacancy arises or the post is created. This decision elucidates the nuances of employment law, particularly concerning the right to promotion and its procedural prerequisites.

Case Background

The dispute arose when an employee of the Bihar State Electricity Board demanded retrospective promotion, claiming it should date back to when the vacancy first occurred. The employee's argument hinged on the notion that the existence of a vacancy inherently entitled them to the higher post from that point in time. The Board, however, contested this claim, leading to the legal battle that culminated in the Supreme Court.

Key Legal Principles

1. Effective Date of Promotion:

The Supreme Court underscored that a promotion is effective from the date it is actually granted. This principle asserts that the mere existence of a vacancy does not entitle an employee to retrospective promotion. The decision emphasized that promotions are not retroactive and must be acknowledged from the date they are officially conferred.

2. Right to be Considered vs. Right to Promotion:

The Court drew a clear distinction between the right to be considered for promotion and the right to promotion itself. While acknowledging that the right to be considered for promotion is both a statutory and fundamental right, the Court clarified that there is no automatic right to promotion. This distinction is crucial as it upholds the merit-based system of advancement within public service, ensuring that promotions are granted based on due process rather than entitlement.

3. Procedural Compliance:

The judgment highlighted that even if a vacancy exists, an employee must undergo the prescribed process for promotion. This includes fulfilling all eligibility criteria and successfully completing any requisite evaluations or assessments. The Court's decision emphasized that promotions are contingent on procedural compliance, reinforcing the importance of a structured and fair process in career advancement.

Implications of the Judgment

1. Ensuring Fairness and Meritocracy:

By asserting that promotions are effective from the date they are granted, the Supreme Court's ruling promotes fairness and meritocracy within the public sector. It ensures that promotions are based on

current eligibility and performance rather than retrospective claims, thereby fostering a more transparent and equitable system.

2. Clarification for Future Cases:

This judgment serves as a precedent for similar cases in the future, providing clarity on the effective date of promotions. It sets a clear guideline for public sector organizations and employees regarding the rights and processes associated with promotions, potentially reducing litigation on similar grounds.

This ruling reinforces essential principles in employment law by distinguishing between the right to be considered for promotion and the right to promotion, and by emphasizing the importance of procedural compliance, the Court has upheld the integrity of the promotion process. This judgment ensures that promotions within public sector organizations are granted based on merit and due process, thereby fostering a fair and equitable work environment.

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The State Of Rajasthan & Ors v. Bhupendra Singh (Citation: 2024 INSC 592) before Hon'ble Supreme Court.

"High Court Should Not Reappreciate Evidence Led In Departmental Enquiry : Supreme Court."

B Andrew Prabhu
RPFC-I (Legal) EPF HQ

In a recent decision, the Supreme Court of India addressed critical aspects of judicial review in disciplinary proceedings, emphasizing the limits of court intervention in matters of administrative discipline. The case, *The State of Rajasthan & Ors v. Bhupendra Singh*, provides significant insights into the expectations from disciplinary authorities and the extent of judicial scrutiny applicable to their decisions.

Case Background

The appellant, the State of Rajasthan, challenged the decision of the Rajasthan High Court concerning disciplinary action against an employee, Bhupendra Singh. The employee was suspended and later removed from service following a departmental inquiry into alleged irregularities. The issue at hand involved the adequacy of reasons provided by the disciplinary authority and the extent of judicial intervention in such cases.

High Court's Ruling

Initially, the Rajasthan High Court's Single Bench quashed the suspension and removal orders, directing reconsideration of Singh's promotion. The Division Bench upheld this decision, asserting that courts should not act as appellate authorities to re-assess evidence or intervene merely because another view was possible. The Division Bench emphasized that judicial review should be limited to cases where the findings were based on no evidence or were clearly perverse.

Supreme Court's Analysis

The Supreme Court's judgment clarified several key issues:

1. **Requirement of Elaborate Reasons**: The Court affirmed that while disciplinary authorities are not required to provide elaborate reasons when accepting the findings of an inquiry officer and imposing punishment, they must engage with representations or submissions made by the delinquent employee. This ensures that the disciplinary process respects the principles of fairness and due process.
2. **Limits of Judicial Review**: The Court reiterated that judicial review does not extend to re-evaluating the evidence or substituting the court's judgment for that of the disciplinary authority. The review is restricted to assessing procedural fairness and legality. The Court criticized the High Court for discussing the standard of non-interference while paradoxically overturning the disciplinary orders based on perceived evidentiary insufficiencies.
3. **Extent of Reappraisal by High Courts**: While acknowledging that reappraisal of facts and evidence by High Courts is not entirely impermissible, the Supreme Court emphasized that such review must be justified by more than ordinary infirmities. The Court found that the High Court's intervention was unwarranted as there was no evidence of substantial procedural non-compliance or prejudice to the respondent.
4. **Restoration of Disciplinary Orders**: The Supreme Court restored the removal order passed by the disciplinary authority, ruling that the earlier decisions by the Single and Division

Benches of the High Court were unsustainable. However, the Court directed that payments made to the employee be not recovered, considering his age and retirement status, thus balancing the need for administrative discipline with compassion for the employee's circumstances.

The ruling in *The State of Rajasthan & Ors v. Bhupendra Singh* underscores the Court's commitment to ensuring that disciplinary processes are both fair and legally sound. It reinforces that while disciplinary authorities must address employee representations, judicial review is confined to assessing procedural adherence and not the merits of the decision. The judgment serves as a reminder of the boundaries of judicial intervention and the importance of maintaining integrity in administrative actions.

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Ramnaresh @ Rinku Kushwah & Ors. v. State Of Madhya Pradesh & Ors. (Citation: 2024 INSC 611) before Hon'ble Supreme Court

Navendu Rai,
RPFC-I (Legal) EPF HQ

The Supreme Court of India, in its recent judgment in *Ramnaresh @ Rinku Kushwah v. State of Madhya Pradesh* (2024 INSC 611), has provided critical insights into the application of reservation policies, particularly horizontal reservations in educational admissions.

This case highlights the nuances of reservation laws and the Court's approach to rectifying procedural errors in implementing such policies. This article delves into the facts of the case, the legal arguments presented, and the implications of the Supreme Court's decision.

Facts of the Case

The case revolves around the dispute over the allocation of MBBS seats under the Government School (GS) quota in Madhya Pradesh. The appellants, students who had secured high marks in the NEET (UG) Examination, challenged the decision of the Department of Medical Education in Madhya Pradesh. They argued that the State's decision to reallocate certain MBBS seats from the GS quota to the general pool violated their right to admission based on their merit and the established reservation policies.

In June 2019, the State of Madhya Pradesh had amended its Admission Rules, introducing a GS quota for government school students. However, the subsequent sub-classification of these seats into various categories such as Unreserved Government School (UR-GS), SC-GS, ST-GS, OBC-GS, and EWS-GS led to a situation where seats were not filled appropriately. By the end of the counseling process, many UR-GS seats remained vacant and were eventually transferred to the open category, sparking the dispute.

Legal Arguments and Issues

1. **Violation of Horizontal Reservation Principles**: The appellants argued that the State's policy of further subclassifying the GS quota was in violation of the principles established in the Supreme Court's judgment in *Saurav Yadav v. State of Uttar Pradesh*. They contended that candidates from reserved categories (SC/ST/OBC) who were meritorious should have been admitted to UR-GS seats if they qualified based on their merit.
2. **Procedural Errors**: The appellants highlighted that the improper application of horizontal reservation policies resulted in seats being allocated to less meritorious candidates. They argued that the incorrect implementation deprived them of their rightful admission opportunities.
3. **State's Justification**: The State of Madhya Pradesh defended its policy, asserting that the subclassification of GS quota seats into various categories was consistent with the principles of horizontal reservation and that vertical reservation categories (SC/ST/OBC/EWS) could not be merged into the general category.

Supreme Court's Judgment

The Supreme Court ruled in favor of the appellants, emphasizing that the methodology used by the State for subclassifying the GS quota was flawed. The Court underscored that according to established jurisprudence, particularly the judgments in *Saurav Yadav* and *Sadhana Singh Dangi*, meritorious reserved category candidates should not be restricted to horizontal reservation slots but should be allowed to compete in the general category if their merit warrants it.

Key Takeaways from the Judgment

1. **Adherence to Reservation Principles**: The Court reiterated the importance of adhering to established principles of reservation, emphasizing that the horizontal reservation should not be used to limit merit-based admissions. Candidates from reserved categories who qualify on merit should be considered for general category seats if they meet the criteria.
2. **Correction of Procedural Errors**: The judgment underscores the Court's role in correcting procedural anomalies in the implementation of reservation policies. It highlights the need for transparency and adherence to legal principles in the allocation of educational and employment opportunities.
3. **Future Admissions**: As the academic session for 2023-24 was completed, the Court directed that the appellants be admitted in the next academic session (2024-25) against the UR-GS seats. This decision underscores the Court's commitment to ensuring justice even when immediate rectification is not possible.

The Supreme Court's decision in *this case* is a significant ruling that clarifies the application of horizontal reservation policies. It reinforces the principle that merit should prevail over procedural errors and that reservation policies should be implemented in a manner that respects both legal norms and individual rights. This judgment not only provides relief to the appellants but also sets a precedent for future cases involving the intersection of reservation policies and merit-based admissions.

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Grant of Notional Increment for Retired Central Government Employees: A Legal Perspective

Banoth Premsai Nayak,
ASO (Legal), EPF HQ

The **Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training (DoPT)**, Government of India, has issued a significant **Office Memorandum (OM)** in **October 2024** concerning the grant of **notional increments** to Central Government employees who retired on **30th June** or **31st December**. This memorandum is a direct response to ongoing judicial decisions, including landmark rulings by the **Hon'ble Supreme Court of India**, and addresses a longstanding issue affecting retirees' pensionary benefits.

This article examines the detailed legal developments that led to this OM, its implications for pension calculations, and the judicial precedent that forms its basis.

Background: The Notion of Uniform Increment Date

The concept of granting notional increments to Central Government employees retiring on specific dates stems from changes made in the **Central Civil Services (Revised Pay) Rules,** (2006), which introduced a uniform date of **1st July** for annual increments. It was subsequently decided vide Rule 10 (1) of the Central Civil Services (Revise Pay) Rules, 2016, notified by D/o Expenditure vide Notification No. G.S.R. 721 (E) dated 25.07.2016, that there shall be two dates for grant of increment namely **1st January** and **1st July** of every year. Prior to this change, increments were linked to individual service anniversaries. However, this uniform date created an anomaly for employees who retired on **31st December** and **30th June**, one day before their annual increment became due, leaving them unable to benefit from an additional increment that would enhance their pension and other retirement benefits.

This anomaly led to multiple representations from retirees and a growing number of court cases, with affected employees seeking relief on the grounds that they had completed a full year of service and were thus entitled to an increment.

Judicial Precedents: The P. Ayyamperumal Case and Beyond

The issue gained momentum with the judgment of the **Madras High Court** in the case of **P. Ayyamperumal vs. Union of India** (W.P. No. 15732/2017), where the court ruled in favor of the petitioner, allowing him to receive a **notional increment** for pensionary benefits despite retiring on **30th June**, the day before the annual increment was due. The ruling was based on the premise that since the petitioner had completed a full year of qualifying service, fairness demanded that he be granted the increment for the purpose of calculating his pension.

While the judgment in the **Ayyamperumal case** was applied in **personam** (specific to the petitioner), it opened the floodgates for similar claims from other retirees, leading to numerous petitions in **Administrative Tribunals**, **High Courts**, and eventually the **Supreme Court of India**.

The Supreme Court's Intervention: A Landmark Decision

The legal landscape surrounding the grant of notional increments took a significant turn with the **Supreme Court's order dated 11th April 2023** in **Civil Appeal No. 2471 of 2023** (Director (Admin. and HR) KPTCL vs. C.P. Mundinamani). The Supreme Court upheld the decision of the **Karnataka High Court**, which granted a notional increment to retirees who had rendered satisfactory service and retired on the last day of the service year, for the purpose of calculating pension.

The Supreme Court reasoned that the increment was earned by the retirees through a year of service, and denying it would be unjust. This ruling laid the foundation for the **DoPT's October 2024 memorandum**, which aims to uniformly apply the benefit of notional increments to all eligible retirees.

Legal Provisions Considered: Fundamental Rules (FRs) and Other Statutes

The **Fundamental Rules (FRs)** governing Central Government employees were central to the DoPT's examination of this issue. Specifically:

- FR 9(21)(a) defines 'pay' as the amount sanctioned to a Government servant for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre.
- FR 17 provides that subject to any exceptions specifically made in these Rules, an employee shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties.
- FR 24 stipulates that an increment may be withheld from a Government servant if his conduct has not been good or his work has not been satisfactory.

To summarise these Rule provisions, for availing the benefit of an increment on the date of its accrual, an employee should be in service, should have rendered satisfactory work and should have displayed good conduct during the period of qualifying service. However, the Supreme Court, in its rulings, emphasized that an employee who retires after completing a full year of service should not be denied the increment merely due to the timing of their retirement. This interpretation supports the broader principle of fairness in service jurisprudence.

Notional Increment and Pensionary Benefits: The 14th October 2024 OM

The **October 2024 OM** issued by the **DoPT** is a critical development in this ongoing legal saga. The memorandum, which followed extensive legal consultations, including with the **Department of Expenditure** and the **Department of Legal Affairs**, directs that:

- Employees retiring on **30th June** or **31st December**, who would have otherwise been eligible for an increment on **1st July** or **1st January**, respectively, shall be granted a **notional increment**.
- The increment is **not for other pensionary benefits** like gratuity or leave encashment, but **exclusively for the calculation of pension**.

This OM, while providing clarity, is issued in compliance with the **Supreme Court's interim orders dated 6th September 2024** in **SLP(C) No. 4722/2021** (Union of India vs. M. Siddaraj). The Supreme Court's interim order states that:

a. The judgment dated 11.04.2023 will be given effect to in case of third parties from the date of the judgment, that is, the pension by taking into account one increment will be payable on and after 01.05.2023. Enhanced pension for the period prior to 30.04.2023 (erroneously mentioned as 31.04.2023 in the Order) will not be paid.
b. For persons who have filed writ petitions and succeeded, the directions given in the said judgment will operate as res judicata, and accordingly, an enhanced pension by taking one increment would have to be paid.
c. The direction in (b) will not apply, where the judgment has not attained finality, and cases where an appeal has been preferred, or if filed, is entertained by the appellate court.
d. In case any retired employee has filed any application for intervention/impleadment in Civil Appeal No. 3933/2023 or any other writ petition and a beneficial order has been passed, the

enhanced pension by including one increment will be payable from the month in which the application for intervention/impleadment was filed,

Review Petition and Future Implications

The **Union of India** has filed a **Review Petition (Dy. No. 36418/2024)** before the **Supreme Court**, seeking further clarity on the **11th April 2023 judgment**. This review petition, expected to be heard in **November 2024**, may potentially affect the scope of the notional increment's applicability.

In the interim, the DoPT has advised all ministries and departments to proceed with the grant of notional increments for pension calculations, subject to the final outcome of the **Review Petition**. These instructions aim to prevent further litigation and provide immediate relief to eligible retirees.

Conclusion: Legal and Policy Implications

The **October 2024 OM** is a milestone in the legal journey for retirees seeking fair treatment in pension calculations. It acknowledges the legitimate expectation of employees who, despite retiring just before their increment date, completed a full year of service and demonstrated satisfactory performance. The **Supreme Court's judgments** have played a pivotal role in shaping this policy, highlighting the balance between administrative rules and equitable treatment of employees.

While the final outcome of the **Review Petition** remains to be seen, this OM provides immediate relief to retirees and brings much-needed clarity to a complex and litigated issue. The evolving legal framework on this subject underscores the importance of judicial intervention in ensuring fairness in administrative decisions, particularly in cases that affect the welfare of government employees post-retirement.

As the legal proceedings continue, this issue will remain a point of focus for both policymakers and the legal fraternity, with the potential for further refinements based on future judgments and administrative decisions.

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Government Employee Cannot Refuse to Join New Place of Posting While Contesting Transfer: Supreme Court Clarifies in Landmark Ruling

Abhishek Bisht,
ASO (Legal), EPF HQ

The issue of government employees contesting transfer orders while refusing to join the new place of posting has been a persistent problem in service law. In a significant judgment, the Supreme Court of India has recently held that government employees cannot refuse to comply with transfer orders while contesting them in courts or other forums. This ruling came in the case of *Tamil Nadu Agricultural University & Anr. v. R. Agila & Ors.*, where the Court reinforced the fundamental principle that **transfers are a condition of service** and employees must respect administrative orders unless expressly stayed by a competent authority.

Background of the Case

The case involved six employees of the Tamil Nadu Agricultural University who were transferred from their current postings. Aggrieved by the transfer orders, the employees approached the Madras High Court, which granted interim relief to four of them, staying the transfer. However, two of the respondents did not receive such relief and continued to contest their transfers while refusing to join their new place of posting.

These employees argued that they should not be compelled to join the new locations while their legal challenges were pending and sought full salaries for the period they remained absent. The issue before the Supreme Court was whether employees could refuse to comply with transfer orders during the pendency of such legal challenges and if they were entitled to salaries during this period.

Supreme Court's Ruling

In a categorical judgment, the Supreme Court held that **government employees cannot refuse to join their new place of posting while contesting the transfer order**. The Court ruled that transfers are an exigency of service and are inherent in the terms and conditions of government employment. The failure to comply with a transfer order without a valid stay order from the court would lead to adverse consequences, including the potential forfeiture of salary for the period during which the employee remains absent.

The Court rejected the plea of the two respondents who had refused to join the new place of posting despite having no interim stay order in their favor. The bench clarified that while the right to challenge a transfer order is constitutionally protected, **employees cannot simultaneously refuse to comply with the order and demand full benefits** during the pendency of litigation. In this context, the Court ruled that the respondents were not entitled to salary for the period of unauthorized absence.

However, the Supreme Court directed that the service of the two employees be regularized, ensuring that they did not suffer from any loss of continuity in service, but without the benefit of salary for the period during which they did not report to the new posting.

Key Observations

1. **Transfer as a Part of Service**: The Supreme Court reiterated that transfer is an essential aspect of government service and is at the discretion of the employer. Transfers are meant to meet administrative needs and ensure efficient functioning of government institutions. Personal inconvenience or hardship cannot be the sole ground for resisting a transfer, as **public interest** takes precedence over individual preferences.

2. **Right to Challenge, Duty to Comply**: The Court made it clear that while government employees have the right to challenge a transfer order in the courts, they must comply with the order unless it is stayed by a court of law. The refusal to join the transferred position during the pendency of litigation can lead to disciplinary actions, including the denial of salary for the period of unauthorized absence.
3. **Judicial Burden and Administrative Challenges**: The judgment highlights a pressing issue that has plagued government institutions—employees frequently prolong litigation to avoid transfers. The Court condemned this practice, noting that it results in administrative inefficiency and burdens the public exchequer, as vacancies remain unfilled and alternative arrangements have to be made to manage the workload in the absence of transferred employees.
4. **No Salary Without Work**: One of the central rulings in the judgment was that employees who refuse to comply with transfer orders cannot demand salary for the period of unauthorized absence. The Court stressed that the **principle of 'no work, no pay'** applies in such cases. By refusing to join their new posting, the respondents had effectively denied the employer their services, and thus, were not entitled to salary during the period in question.

Legal Implications

This judgment is poised to have a far-reaching impact on service law jurisprudence and government administration. It sends a clear message that while judicial review of transfer orders is permitted, employees cannot abuse the legal process to avoid fulfilling their duties. The judgment ensures that public interest is safeguarded by preventing employees from using litigation as a tactic to delay compliance with transfer orders.

Further, this decision is likely to streamline the administrative process by discouraging frivolous litigation related to transfers. Government employers can now rely on this ruling to enforce transfers more effectively, knowing that non-compliance without valid legal grounds will not be tolerated by the courts.

The Supreme Court's ruling in *Tamil Nadu Agricultural University & Anr. v. R. Agila & Ors.* clarifies a critical aspect of service law concerning employee transfers. The judgment reinforces that **compliance with transfer orders is not optional**, even when the legality of such orders is being contested. Employees must comply with transfer orders in the absence of a stay, and their refusal to do so will result in the loss of salary for the period of unauthorized absence. This decision stands as a significant reminder that public administration cannot be held hostage to individual preferences or prolonged litigation, and the **integrity of service conditions must be maintained** in the larger interest of public administration.

This ruling sets a precedent for addressing similar challenges in the future, affirming that public service obligations are paramount and must be respected by government employees, irrespective of personal grievances or legal disputes.

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PENSION MATTERS

"Computation of monthly member pension is to be done as per para 12(2), 12(3), 12(4) & 12(5) of the Employees' Pension Scheme,1995"

Kashinath Shripat Teli & Ors Vs EPFO Writ Petition no. 8897 of 2022 before the Hon'ble High Court of Bombay bench at Aurangabad

Anil Kumar Pritam
Regional P.F. Commissioner-I
Regional Office, Nashik

Brief Facts:

The Superannuated Employees of Maharashtra State Road Transport Corporation, Jalgaon objected the calculation of pension done as per para 12(3), 12(4) and 12(5) stating that they were member of Employees' Family Pension Scheme,1971 and member of Employees' Pension Scheme,1995 however their past service rendered prior to 1995 for which they had contributed was not considered while computing the pension and inadequate pension was paid.

The Superannuated Employees/pensioners claim that pension should be calculated without making a distinction between past service rendered up to 16.11.1995 under FPS, 1971 & contributory service rendered after 16.11.1995 under EPS' 95 and that the entire service period i.e. the past service under Family Pension Scheme (FPS),1971 and contributory service period under Employees' Pension Scheme' (EPS) 95 should be consolidated and considered as a whole.

Regional office, Nasik argued that pension benefits are to be calculated as per the para 12(3) to para 12(5) of EPS' 95 provisions that gives separate weightage for the service period before and after the cutoff date of 16.11.1995 i.e. the date on which EPS' 95 became effective.

Issue in question:

Whether the computation of pension for pensioners who were in service prior to 16.11.1995 i.e. the effective date of implementation of EPS' 95 and whose pension becomes due after 16.11.1995, should be calculated by aggregating the past service pension under FPS, 1971 and contributory service pension under EPS'95 as determined under Para 12(2) and 12(3)/(4)/ (5) of the EPS' 95 ?

Relevant Extracts:

The Superannuated Employees of M.S.R.T.C, Jalgaon preferred an appeal before the Hon'ble District Consumer Forum, Jalgaon and Subsequently Hon'ble District Consumer Forum, Jalgaon passed judgement on 03/01/2019 allowing the complaints of employees. Being aggrieved, the EPFO, Regional Office, Nashik had filed appeals before State Consumer Forum, Nashik. By common Judgment and order, passed on 18/12/2019, Judgment of the District Consumer Forum was quashed by the Hon'ble State commission and the matter was referred to the EPFO under Para 41 (Interpretation) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Subsequently, Addidtional Central Provident Fund Commissioner, Zonal Office, EPFO, Pune was nominated as the Authority of the Central Government under para 41 of Employees' Pension EPS 1995 to act on behalf of Central Government . The nominated authority passed distinct orders on 05/07/2021 rejecting the claim of the petitioners-Pensioners stating that the claim of pensioner to determine pension amount by reckoning entire service period as contributory service i.e without bifurcating and giving due weightage for past service under FPS, 1971 and contributory service under EPS'95, is ex-facie illegal, inasmuch as, the same runs contrary to the clear and unambiguous relevant provisions of the EPS' 95.

The Superannuated Employees' of MSRTC,Jalgaon preferred an appeal before Hon'ble High Court Bombay bench at Aurangabad against order dated 05/07/2021, passed by the Nominated Authority of the Central Government.

EPFO, Regional Office, Nashik argued that the there is distinct methodology for computation of pension for new entrants and existing members. The employees rendering service prior to commencement of the Scheme of 1995, are the existing members. They are not the new entrant. The method of calculation for the pension of existing member does cover the contribution made by them, their past pensionable and eligible service (rendered for the period prior to the commencement of Act of 1995). In case of computation of the pension for existing members, the provisions are made in sub-paragraph (3), (4) and (5).

Agreeing with the submissions made by EPFO, the Hon'ble High Court, Bombay bench at Aurangabad vide order dated 18/07/2023 in respect of Writ Petition 8897 of 2022[Kashinath Shripat Teli & Ors Vs EPFO & Ors] observed that there is no question of interpretation of any of the provisions of Act or Scheme.The legislative disposition provides mandatory method of calculation applicable to petitioners.When statutory provisions are explicit and there is clear cut legislative mandate governing the field, stretching the benefit on the basis of benevolent nature of the legislation is impermissible. The computation of the pension of the petitioner is clearly covered by statutory formula laid down in para 12 (4) and (5) of the Scheme. The employees/pensioners are being already conferred with the statutory benefits, their claim is extraneous and de hors the legal sanctity. The EPFO had already extended what is permissible in law and we find no illegality in the same.The employees/pensioners are not entitled to any benefits just because the Act and Schemes in question are benevolent in nature.

The judgement is of immense legal and functional significance as it is judicially settled that while computation of pension of members/pensioners who had rendered service prior to 16/11/1995 and superannuated after 16/11/1995 their past pensionable service would be considered according to paragraphs No.12 (3) ,(4) and (5) of Employees' Pension Scheme,1995.

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Brief of Madras High Court order dt 07-02-2024

Anil Chauhan
RPFC-II (Legal)
EPF HQ

A batch of writ petitions were filed before the Hon'ble High Court arising out of common Order passed in batch of Writ petitions, dated 27.03.2019.

The petitions were filed by two categories of employees: 1. Employees of PF exempted establishment and Un-exempted establishment.

The learned counsels for the Writ petitioners contended that their case falls under paragraph 44(vi) of the Supreme Court judgment, wherein it is held that they have already exercised their option as per Proviso to Para 26(6) of the EPF scheme. Thus, they are entitled for pension on actual salary paid by them. Petitioners prayer was to issue direction to EPFO to pay higher pension as per actual salary paid by them. The petitioners, who were retired employees, were seeking clarification on their eligibility for pension benefits based on their actual salary, as per various judgments and directions issued by the Hon'ble Supreme Court.

The Hon'ble Court held that the contentions raised by the petitioners have already been answered by the Supreme Court vide its judgement dated 04.11.2022 (Sunil Kumar B).

It was held that the employees who retired before 01.09.20214 without exercising the option provided under paragraph 11(3) of the pre-amendment scheme, are not entitled to the benefits outlined in paragraph 44(v) and 44(vi). The Court reiterated that only those employees who exercised the option under the 1995 scheme before the mentioned date would be covered by the provisions of the pre-amendment pension scheme.

The High Court further emphasized that unless a different view is taken by a larger bench of the Apex Court, it is bound by the decision in Sunil Kumar's case and cannot pass any orders contrary to it.

Therefore, the batch of writ appeals filed in this case was disposed of in accordance with the judgment of the Apex Court in The Employees Provident Fund Organisation and Ors. Vs. Sunil Kumar B. and Ors. [2002 SCC online] (SLP C.No.8658, 8659 of 2019).

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CC NO. 01/2019 in the Sri B. Narasimha Reddy vs The Assistant P. F. Commissioner, Kadapa and others.

Sri Hemong Venkatesh
RPFC - I (Legal)
Regional Office: Regional Office, Kadapa

It is to submit that calculation put – forth by the complainant is not in consonance with any documentary evidence and relevant rule/provisions of E.P.F & M.P. Act,1952 and the Schemes framed there under for which he is claiming as eligible for higher pension of Rs.4643/- or 4653/-on higher wages. Further, claiming for the fixation of higher pension of Rs.4643/- or Rs.4653/- is not raised before this Hon'ble Forum and only made before the Hon'ble A.P. State Consumer Dispute Redressal Commission that is also without any relevance/base in arriving the calculation of pension amount for Rs.4643/- or Rs. 4653/- . The quantum of pension is dependent on various factors like Past Service, Pensionable Service, Pensionable Salary, Breaks in Service, Non-Contributory Period, Date of Birth of the members, Wages on 15.11.1995 and date of commencement of pension in the case of early/reduced pension as opted by the complainant in the instant case under Para 12(7) of Employees' Pension Scheme,1995 and it will varies from case to case and in the instant case as per the table furnished supra at the time of initial fixation of the pension of the complainant. All the facts stated supra were suppressed by the Complainant not only before this Hon'ble Forum but also before the higher Fora i.e Hon'ble A.P. State Consumer Dispute Redressal Commission. Further it is also to submit that the complainant has furnished false statement to Hon'ble Forum in regard to his statement i.e. "*the supreme court has relied a decision to increase E.P.S. pension minimum Rs.8000/- and maximum Rs.28500/- per month"* without furnishing any base/documentary evidence for the same besides for calculation of his pension also. The Hon'ble State Commission, Vijayawada the respondents/opposite parties discharge statutory duties, they are bound to give a respectable reply to the appellant/complainant. Unless the opposite parties place the formula for fixation of pension before the

Forum an order on proper lines cannot be passed. Opposite parties are bound to consider the plea of complainant regarding quantum of pension. Hence, the matter is remanded to the District Forum to call for response from opposite parties and deciding the correct quantum of pension of appellant. Opposite parties who are the respondents herein directed to appear before the District Commission, Tirupati. The appeal is allowed, setting aside the order dated 12.06.2019, passed in CC.NO. 01 of 2019, on the file of the District Consumer Disputes Redressal Forum - II, Chittoor at Tirupati and remanding the matter for disposal according to law. The District Commission - II, Tirupati is hereby directed to dispose of the matter.

District Consumer Forum decission:

In the District Consumer Disputes Redressal Commission - II, Chittoor at Tirupati order issued on 30.06.2023 as the complainant also failed to show that he is entitled for a direction for fixation of pension of Rs. 4653/-. There is no obligation to fix the pension at Rs. 4653/- in the absence of entitlement. In the result, Complainant failed to establish that there is deficiency of service. The complainant failed to establish that he is entitled for a direction for fixation of his pension at Rs. 4653/-. The complaint is liable to be dismissed. Complaint is dismissed.

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Delayed Pension Payments and the Consumer Protection Act: A Legal Perspective on Qazi Muhammad Ateeq vs. General Manager, (P & Hr) Department Of Personnel & Anr [Revision Petition No. . 983 OF 2022]

Navendu Rai,
RPFC- I, Legal EPF HQ

In a significant judgment by the National Consumer Disputes Redressal Commission (NCDRC), the case of *Qazi Muhammad Ateeq vs. Union Bank of India* (2024) NCDRC has shed new light on the applicability of the Consumer Protection Act, 1986 in matters involving pensionary benefits.

This case raises important legal questions about whether a retired employee can be considered a "consumer" under the Act when claiming deficiencies in the disbursement of pension, and how courts have approached such disputes over time.

Background of the Case

The petitioner, Qazi Muhammad Ateeq, a former employee of Union Bank of India, was compulsorily retired on May 16, 2011. The Bank paid his pensionary benefits on September 10, 2014, but Ateeq filed a complaint demanding interest on the delayed payment for the period from May 2011 to September 2014. His complaint was dismissed by both the Gorakhpur District Consumer Disputes Redressal Commission and the Uttar Pradesh State Consumer Disputes Redressal Commission on the grounds that he did not qualify as a "consumer" under the Consumer Protection Act, 1986.

Legal Framework and Core Issues

The crux of the legal dispute revolves around the interpretation of the term "consumer" as defined under Section 2(1)(d)(ii) of the Consumer Protection Act, 1986. According to this provision, a consumer is any person who avails of services for a consideration, but it excludes anyone who avails of such services for commercial purposes or as a part of employment. The question then becomes whether a retired employee, in receiving pensionary benefits, can be said to have availed of "services" from his former employer.

The Bank argued that pension and other retirement benefits are governed by statutory regulations and service conditions, rather than forming part of a consumer-service provider relationship. Their argument rested on the decision of the Hon'ble Supreme Court in *Jagmittar Sain Bhagat & Ors. vs. Director, Health Services, Haryana & Ors.*, (2013) 10 SCC 136, where the court held that disputes related to service conditions of government employees, including claims for gratuity and other retiral benefits, fall outside the purview of the Consumer Protection Act.

In contrast, Ateeq cited the Supreme Court ruling in *Regional Provident Fund Commissioner vs. Shiv Kumar Joshi* (2000) 1 SCC 98 and *Regional Provident Fund Commissioner vs. Bhavani* (2008) 7 SCC 111, where it was held that employees contributing to pension schemes or provident funds are consumers under the Act, as they are availing services in return for their contributions. These cases established that if an employee has contributed to a pension or provident fund, the administering authority's failure to provide timely benefits could amount to a deficiency in service.

NCDRC's Ruling and Rationale

Presiding Member Binoy Kumar, in this revision petition, overturned the findings of the lower consumer forums. The NCDRC distinguished the case from *Jagmittar Sain Bhagat*, holding that the complainant's status as a consumer must be assessed based on whether the pension scheme

involved a contributory element. Since Ateeq's pension was tied to his contributions as an employee, the NCDRC ruled that he should be considered a consumer under the Consumer Protection Act, 1986.

The Commission's decision was also influenced by the Supreme Court's reasoning in *Regional Provident Fund Commissioner vs. Bhavani*. The Court had observed that a member of the Employees' Provident Fund and Family Pension Scheme could be regarded as a consumer because they were availing of services provided by the administering authority in exchange for their contributions.

Applying this rationale, the NCDRC concluded that Ateeq had a legitimate expectation to receive his pension benefits promptly upon retirement. The Commission found that the delay in disbursing the pension amounted to a deficiency in service on the part of Union Bank of India. The NCDRC noted that the Bank had provided no valid justification for the delay and thus was liable to compensate Ateeq for the financial loss he suffered due to the delayed payment.

Relief Granted-The NCDRC partly allowed the revision petition and directed Union Bank of India to:

1. Recalculate the pensionary benefits owed to Ateeq from the date of his retirement, i.e., May 16, 2011.
2. Pay interest at the rate of 9% per annum on the delayed payment from May 16, 2011, to September 10, 2014 (the date of actual payment).
3. If the Bank fails to comply with the order within eight weeks, the interest rate would increase to 12% per annum.

This decision underscores the NCDRC's focus on protecting the rights of consumers, including employees seeking timely disbursement of pensionary benefits.

Broader Implications The NCDRC's ruling in *Qazi Muhammad Ateeq vs. Union Bank of India* has broader legal implications. It clarifies that pension-related disputes involving delays in payment can fall within the scope of the Consumer Protection Act, provided the pension is linked to a contributory scheme. This decision signals a more inclusive interpretation of the Act, opening the door for other retired employees to seek redress under consumer law for delayed pension or gratuity payments.

However, the ruling also highlights the fine line between service matters that fall under statutory regulations and those that can be treated as consumer disputes. The distinction lies in whether there is a contribution toward the benefits in question. For non-contributory schemes, employees may need to rely on other forums, such as administrative tribunals or civil courts, for resolving their grievances.

The NCDRC's decision in this case marks an important development in consumer law, particularly in the context of pension disputes. It affirms that employees contributing to pension schemes can be classified as consumers and that delays in pension payments can constitute a deficiency in service. This ruling is likely to have a significant impact on future pension-related disputes, particularly those involving delayed payments by public sector banks and other government entities.

By recognizing the rights of employees to receive prompt and fair treatment regarding their pension entitlements, this case reinforces the protective framework of the Consumer Protection Act, 1986, and underscores the importance of timely and efficient service delivery by pension administering authorities.

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ACCOUNTS

Central (Chief) P.F. Commissioner & Others Vs. Alok Kumar Agarwal & Another [LPA 486/2021 in High Court of Delhi dated 14.07.2023]

No Interest on Inoperative EPF Account (Imposition of ₹1 lac cost on EPFO quashed)

SUDARSHAN KUMAR,
RPFC-I, EPFO SURAT

Background

A retired employee filed a petition in the Hon'ble High Court of Delhiclaiming interest on the amount lying in his inoperative account even for the period his P.F. account was so marked.

The EPF account of the petitioner had become inoperative w.e.f. December 2017 and interest was not payable, as per the provisions of paragraph 72(6) of the EPF Scheme, 1952.

The Hon'ble Court while denying this prayer, imposed the cost of one lakh Rupees on the respondent EPFO, inter alia, on the grounds that it was reasonably expected of EPFO to intimate the P.F. members three months beforehis/her P.F. account become due as"inoperative account" and that the publicity material issued by the Central Board/EPFO intimating the public at large about the notification introducing"inoperative account" system was confusing.

Both parties became aggrieved by this judgment; the employee/petitioner for denial of main prayer of allowing interest on the amount in his P.F. account for the period it was "inoperative" andthe respondent authority for impositionof cost. This led to cross-appeal (two LPAs) which were clubbed and decidedby the present judgment.

Ratio and the salient aspects the Judgment:

No Liability can be attached to a public authority on the ground of such publicity material being vague, unclear or even confusing.

This means that in case any enactment or amendment to any statute or rules is formally published in the gazette and such development is also additionally published through newspapers or social media, no person is entitled to claim any relief from the public authority concerned on the ground that he/she ended up suffering an injury (monetary or otherwise) as the publicity material was confusing resulting into him/her drawing an incorrect conclusion. The proper course of action is to refer to the primary source i.e. the text of the gazette publication and to base his action upon that. Further, the Hon'ble Court also based its judgment on the precedence laid down in the case of Dr. Arun Gopal Aggarwal case by the same Court wherein no interest on a P.F. account that becomes inoperative on account of non-remittance for a continuous period of 36 months was dealt with squarely and this amendment was upheld as valid. The judgment declared imposition of costs of Rs.1,00,000/- by the Ld. Single Judge Bench as unfair, harsh and excessive and the impugned order was quashed.

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EPF dues cannot be recovered from Cash Credit Accounts

Suraj Gupta,
Regional PF Commissioner-II,
RO, Park Street

M/s Besco Limited (Foundry Division) is an establishment covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act"). On the basis of the proceedings initiated under Section 7Q and 14B of the said Act, the Regional Provident Fund Commissioner-I, by an order dated 19th January, 2022, had determined a sum of Rs.14,70,634/- and Rs. 30,26,547/- towards the interests and damages aggregating to a sum of Rs. 44,97,181/- payable by the said establishment.

Thereafter, the establishment made a representation dated 09th June, 2022 addressed to the Central Provident Fund Commissioner for waiver of interests and damages pertaining to the reason that it had suffered financial lose for Covid-19 pandemic.

The Recovery officer, *making a statement that an application for waiver can be made in respect of damages*, had called upon the representative of the establishment vide a letter dated 20th June, 2022 to make payment of interest of Rs. 14,70,634/- .

Further, the Recovery Officer, vide letter dated 21st Nov, 2022, made intimation to the establishment that its application for waiver of damages was rejected on the ground that the establishment was not registered under the Board for Industrial and Financial Reconstruction (BIFR) and no sanctioned rehabilitation scheme was operative. It is pertinent to mention here that the decision to grant or to reject the application for waiver of damages under section 14B of the said Act can only be taken by the Central Board of Trustees. It is also to mention here that for an establishment to qualify for waiver within the meaning of Section 14B of the said Act, the establishment would necessarily be required to be declared a sick company within the meaning of the Sick Industrial Companies Act of 1985 (SICA).

In the meantime, by issuing an order dated 13th March, 2023, the Recovery Officer, in exercise of the powers conferred on him under Section 8F(3)(i) of the said Act, had called upon the banker "State Bank of India, Overseas Branch, Kolkata" of the representative of the establishment to pay a sum of Rs. 44,97,181/- (whole of the due). In due course, a sum of Rs. 56,05,180/-(along with other dues u/s 14B of other periods) has been credited in favour of EPFO, RO, Park Street from the establishment's bank account, which was actually be a *cash credit account* on a later stage.

Consequently, the establishment filed an application which was registered as GA No. 1 of 2023 and vide an order dated 30th March, 2023, the court had directed the respondent "Provident Fund Authorities" to deposit the aforesaid amount of Rs. 56,05,180/- with the Registrar Original Side, High Court, Calcutta.

In this scenario, the primary contention of the petitioners appears to be that when the statute recognizes the power to waive damages, and such power has been conferred upon a particular authority i.e. the Central Board of Trustees, no other authority apart from such authority is authorized to decide on the issue of waiver of damages. Since no rejection order has been issued by the Central Board of Trustees, it could be presumed that the petitioners' application was still pending consideration, and thus no action for recovery, at least in respect of damages can be initiated.

But, it had been observed by the Hon'ble High Court, Calcutta that as the establishment does not prima facie qualify for being entitled to waiver, the issue whether the C.B.T could have delegated its power becomes academic. Thus, the action of the Recovery Officer to take steps to seek recovery of the determination made under Section 14B of the said Act, cannot be said to be irregular.

It was also observed by the Hon'ble High Court that on the strength of the order dated 13th March, 2023 issued by Recovery Officer, the officer has recovered a sum of Rs. 56,05,180/- from the petitioner's banker, notwithstanding, the aforesaid account being a cash credit account. It is well settled that in cash credit account no money of the constituent is kept. The money is of the bank,

which is lent in favour of the constituent. Ordinarily, therefore, such accounts are not subject to attachment, for the simple reason that the aforesaid money does not belong to the constituent, in this case being the establishment.

The court was of the view that since, the aforesaid recovery was not sustainable on the ground that the money did not belong to the defaulter establishment, the entire amount along with accrued interest was to be released in favour of the banker by learned Registrar, Original Side.

With the aforesaid directions and/or observations, the writ application being WPA 12132 of 2023 and the connected application being GA No. 1 of 2023 was disposed of by the Hon'ble High Court, Calcutta.

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JUDICIAL PRECEDENTS

[State of Uttar Pradesh v. Association of Retired Supreme Court and High Court Judges at Allahabad, 2024 SCC OnLine SC 14, Decided on: 03-01-2023].

"Supreme Court Issues Guidelines To HCs On Summoning Govt Officials, Says Personal Presence Should Be Exceptional"

Navendu Rai,
RPFC-I, Legal
EPF HQ

In an appeal against Allahabad High Court's orders, which gave rise to questions about the separation of powers, the exercise of criminal contempt jurisdiction, and the practice of summoning Government Officials to the Court, Hon'ble Supreme Court gave a Standard Operating Procedure along with a slew of guidelines as to require the presence of Government Officials.

Factual Matrix:-

In the matter at hand, the High Court, vide order dated 04-04-2023, directed the Government of Uttar Pradesh to *inter alia* notify rules proposed by the Chief Justice of the High Court pertaining to 'Domestic Help to Former Chief Justices and Former Judges of the Allahabad High Court' by the next date of hearing and directed certain Government officials to be present before the Court if the order was not complied with.

In response to this, the State moved an application before the High Court to seek a recall of the Order dated 4-04-2023, highlighting legal obstacles in complying with the directions of the High Court.

The High Court vide order dated 19-04-2023, held that the recall application was 'contemptuous' and initiated criminal contempt proceedings against various Government officials. The officials present in the Court, including the Secretary and Special Secretary (Finance) were taken into custody and bailable warrants were issued against the Chief Secretary and the Additional Chief Secretary (Finance).

The Supreme Court, vide an interim order dated 20-04-2023, stayed the operation of both the Impugned Orders and the Government officials, who were taken into custody were directed to be released. Guidelines to guide the Courts as to direct the presence of Government Officials. The Court took note of the conduct of the High Court in frequently summoning officials of the Government.

The Supreme Court said that the appearance of Government officials before Courts must not be reduced to a routine measure in cases where the Government is a party and can only be resorted to in limited circumstances. The Court stated "**that the use of the power to summon the presence of Government Officials must not be used as a tool to pressurize the Government, particularly, under the threat of contempt"**.

Further, the Court said that the Law officers act as the primary point of contact between the Courts and the Government and they not only represent the Government as an institution but also represent the various departments and officials that comprise the Government.

The Supreme Court said that in the present case, the High Court repeatedly summoned Government officials and the issuance of bailable warrants by the High Court against officials, including the Chief Secretary, who was not even summoned in the first place, indicated the High Court's attempt to unduly pressurize the Government. Placing it's reliance on **State of Uttar Pradesh v. Manoj Kumar Sharma, (2021) 7 SCC 806**, the Court said that the Courts must refrain from summoning officials as the first resort and the Courts across the country must foster an environment of respect and professionalism, duly considering the constitutional or professional mandate of law officers, who represent the Government and its officials before the Courts. Further, the Court said that constantly summoning the Government Officials instead of relying on the law officers representing the Government, runs contrary to the scheme envisaged by the Constitution.

Standard Operating Procedure (SOP) on Personal Appearance of Government Officials in Court Proceedings:- Considering the present situation, the Bench framed a Standard Operating Procedure (SOP) specifically addressing the appearance of Government Officials before the Courts, which emphasizes the critical need for Courts to exercise consistency and restraint. It aims to serve as a guiding framework, steering Courts away from the arbitrary and frequent summoning of Government officials and promoting maturity in their functioning.

The SOP is applicable to all the Court proceedings involving the Government in cases before the Supreme Court, High Courts and all other Courts acting under their respective appellate and/or original jurisdiction or proceedings related to contempt of Court.

1. **Personal presence pending adjudication of a dispute**:

a. **Evidence-based Adjudication:** These proceedings involve evidence such as documents or oral statements. In these proceedings, a Government official may be required to be physically present for testimony or to present relevant documents.

b. **Summary Proceedings**: These proceedings, rely on affidavits, documents, or reports. They are typically governed by the Rules of the Court set by the High Court and principles of Natural Justice.

c. **Non-adversarial Proceedings:** While hearing non-adversarial proceedings, the Court may require the presence of the Government officials to understand a complex policy or technical matter that the law officers of the Government may not be able to address.

The Court said that the other than in cases falling under 'Evidence-based Adjudication', if the issues can be addressed through affidavits and other documents, physical presence may not be necessary and should not be directed as a routine measure.

The Court also said that the presence of a Government official may be directed, inter alia, in cases where the Court is prima facie satisfied that specific information is not being provided or is intentionally withheld, or if the correct position is being suppressed or misrepresented. The Court said that the presence of an official should not be asked for solely because the official's stance in the affidavit differs from the Court's view. In such cases, if the matter can be resolved based on existing records, it should be decided on merits accordingly.

2. **Procedure prior to directing personal presence Video Conferencing (VC):** The Court said that in exceptional cases wherein the in-person appearance of a Government official is called for by the Court, the Court should allow as a first option, the officer to appear before it through video conferencing. The Invitation Link for VC appearance and viewing, as the case may be, must be sent by the Registry of the Court to the given mobile no/e-mail id by SMS/email/WhatsApp of the official concerned at least one day before the scheduled hearing.

In case of in-person appearance, reasons should be recorded as to why such presence is required along with due notice for in-person appearance, giving sufficient time for such appearance, must be served in advance to the official.

3. **Procedure during the personal presence of the Government officials Scheduled Time Slot:** The Court should, designate a specific time slot for addressing matters where the personal presence of an official or a party is mandated.

The conduct of officials: The Government officials participating in the proceedings need not stand throughout the hearing, it should only be required only when the official is responding to or making statements in Court.

What must be avoided?

i. oral remarks with the potential to humiliate the official

ii. Refrain from making comments on the physical appearance, educational background, or social standing of the official appearing before it.

iii. Comments on the dress of the official appearing before the Court should be avoided unless there is a violation of the specified dress code applicable to their office.

4. Time Period for compliance with judicial orders by the Government-

The Court clarified that ensuring compliance with judicial orders involving intricate policy matters necessitates navigation of various levels of decision-making by the Government. Therefore, the Court said that such complexities must be considered by the Court before establishing specific timelines for compliance with its orders. Hence, a reasonable time frame, as per the specifics of the case, should be accommodated. In case Government seeks a revision of an already passed order in the specified time frame, the Court may entertain such requests and permit a revised, reasonable time frame for the compliance of judicial orders, allowing for a hearing to consider modifications.

5. Personal presence for enforcement/contempt of court proceedings- There should be exercise of caution and restraint when initiating contempt proceedings, ensuring a judicious and fair process. Preliminary Determination of Contempt: In a proceeding instituted for contempt by wilful disobedience of its order, the Court should ordinarily issue a notice to the alleged contemnor, seeking an explanation for their actions, instead of immediately directing personal presence.

Notice and Subsequent Actions: Following the issuance of the notice, the Court should carefully consider the response from the alleged contemnor and on the basis of the same, it should decide on the appropriate course of action. Depending on the severity of the allegation, the Court may direct the personal presence of the contemnor.

Procedure when personal presence is directed: In cases requiring the physical presence of a Government official, an advance notice for an in-person appearance, allowing ample time for preparation, should be given. However, the Court should allow the officer as a first option, to appear before it through video conferencing.

Addressing Non-Compliance: The Court should evaluate instances of non-compliance, taking into account procedural delays or technical reasons. If the original order lacks a specified compliance timeframe, it should consider granting an appropriate extension to facilitate compliance. When the order specifies a compliance deadline and difficulties arise, the Court should permit the contemnor to submit an application for an extension or stay before the issuing Court or the relevant appellate/higher Court.

The Supreme Court's guidelines and SOP provide a balanced approach, emphasizing the need for consistency in the interaction between the judiciary and Government Officials.

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Civil Appeal No.4296 Of 2023 Yashpal Jain Vs Sushila Devi & Others (Supreme Court issues directions for speedy disposal for civil cases.)

Manish Kumar Thakur,
RPFC-I, Legal
EPF HQ

The Supreme Court's ruling in Civil Appeal No. 4296 of 2023, Yashpal Jain Vs Sushila Devi & Others, signifies a groundbreaking development in the Indian judicial system, focusing on the expeditious disposal of civil cases in district and taluka courts. Originating from OS No. 2 of 1982, which involved the nullification of a sale deed and property possession, the case sheds light on the challenges posed by prolonged litigation. The court, recognizing the profound truth in the maxim "justice delayed is justice denied," issued comprehensive directives to redefine the approach toward timely justice.

The key directions provided in the judgment encompass various aspects of the legal process. Firstly, the court mandates the proper execution of summons, with an emphasis on adherence to the guidelines outlined in the Code of Civil Procedure (CPC). Principal District Judges are tasked with monitoring and reporting statistics to a designated High Court committee, ensuring accountability in the execution process.

Timely filing of written statements is another focal point, with courts instructed to ensure prompt submissions, preferably within 30 days. The need for providing written reasons for extensions beyond the stipulated period adds transparency to the process. Moreover, the judgment encourages the use of Alternative Dispute Resolution (ADR) methods after completing pleadings, setting fixed dates and venues and specifying expedited trial commencement in case of ADR failure.

The court also directs courts to frame issues for determination promptly, preferably in open court, and emphasizes day-to-day trial proceedings. Case management strategies are advised to avoid overcrowding, with courts maintaining diaries to manage a reasonable number of cases each day and mitigating adjournments to prevent inconvenience to stakeholders.

Efficient evidence recording, strict adherence to Order XVII Rule 1 for continuous evidence recording during trials, and the implementation of cost penalties to deter unnecessary adjournments are integral components of the judgment. Furthermore, the court underscores the need for swift judgment pronouncements, with oral arguments and judgments directed to occur immediately and continuously post-trial within the Order XX timeframe.

The judgment includes a robust monitoring and reporting mechanism, requiring monthly reporting of cases pending for over 5 years to Principal District Judges, who then compile and forward statistics to High Court review committees.

In contemplating future directions, the Supreme Court reserves the right to issue further directives as necessary for the effective implementation of the judgment. This ruling marks a significant stride towards judicial efficiency, addressing the challenges posed by delayed justice and setting a precedent for enhanced procedural efficiency in future legal proceedings. The commitment to regular monitoring, transparency, and swift post-trial actions underscores a proactive approach in ensuring timely justice delivery.

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"To Adjourn or not to Adjourn"

Anil Chauhan
RPFC-II Legal
EPF HQ

"To be or not be be ", the question that haunted the Prince of Denmark Hamlet in the Shakespearian tragedy , can at times transfix judicial and quasi-judicial officers minds in deciding whether an adjournment sought by a party may be given or not .

Rules and Provisions

The provisions for adjournments of suits are given in Order XVII of CPC 1908. Rule 1(1) of Order XXVII of CPC states that the Court may grant an adjournment to a party if **sufficient cause** is shown. Sub -Rule 2 states that In every such case the Court shall fix a day for the further hearing of the suit, and shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit: Provided that

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.

Case Laws

In the **Salem Bar Association TN v Union of India** case where the constitutional validity of amendments made in CPC by the amending acts of 1998 and 2002 were challenged

Hon'ble Apex Court in Paras 30 31 and 32 observed that "

" 30 . *Order XVII of the Code relates to adjournments. Two amendments have been made therein. One that the adjournments shall not be granted to a party more than three times during the hearing of the suit. The other relates to the cost of adjournment. The awarding of cost has been made mandatory. Costs that can be awarded are of two types. First , cost occasioned by the adjournment and second such higher costs as the court deems fit.*

31. While examining the scope of proviso to Order XVII Rule 1, that more than three adjournments shall not be granted, it is to be kept in view that proviso to Order XVII, Rule 2 incorporating clauses (a) to (e) by Act 104 of 1976 has been retained except where the circumstances are beyond the control of that party. The proviso to Order XVII, Rule 1 and Order XVII, Rule 2 have to be read together. So read, Order XVII does not forbid grant of adjournment where circumstances are beyond the control of the party. In such a case, there is no restriction on number of adjournments to be granted. There may

be cases beyond the control of a party despite the party having obtained three adjournments. For instance, a party may be suddenly hospitalized on account of some serious ailment or there may be serious accident or some act of God leading to devastation. It cannot be said that though circumstances may be beyond the control of a party, further adjournment cannot be granted because of restrictions of three adjournments as provided in proviso to Order XVII Rule 1

In para 32 of the verdict Hon'ble court cited the examples of Bhopal Gas Tragedy Gujrat earthquake Tsunami etc as examples where it becomes necessary to grant adjournments even after three adjournments have been granted. It goes on to say that …" *Further, to save proviso to Order XVII, Rule 1 from the vice of Article 14 of Constitution of Indiaccx` , it is necessary* ***to read it down*** *so as not to take away the discretion of the Court in extreme hard cases*…" It then states at the end that …" *We may, however, add that grant of any adjournment let alone first , second or third adjournment* ***is not a right of a party****. The grant of adjournment by a court has to be on a party showing special and extraordinary circumstances. It cannot be routine.*

In **Bashir Ahmed vs Mehmood Hussain Shah** The Apex Court while ruling on the Order XVII Rule 1(2) proviso (d) ruled that "*If the party engages another counsel as indicated therein, then the need for further adjournment would be obviated. The words-in time, would indicate that at least reasonable time may be given when a counsel suddenly becomes unwell. There would be reasonable time for the parties to make alternative arrangement, when sufficient time intervenes between last date of adjournment and the next date of trial. In such a case, adjournment on the ground of counsel's ill health could be refused and the party would bear the responsibility for his failure to make alternative arrangements "*

The Apex Court **in M/s Shiv Cotex vs Tirgun Plastic Pvt Ltd and Ors** observed that…. "*Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that the cap on adjournments to a party during the hearing of the suit is not mandatory and in suitable cases, on justifiable grounds ,the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII CPCC should be maintained*."

Hon'ble Delhi High Court **in M/s Chatterji Cleaning Services Pvt Ltd v Assistant PF Commissioner (Damage) and others –WP (C) 3613 0f 2011** observed that "The *petitioner has no right to adjournment and if chooses, when the appeal comes up for hearing, to seek adjournment, does so at its own risk and no error is found in the refusal of adjournment and the Tribunal proceeding to reserve the order. The contention that the appeal had come up after five years, adjournment should have been granted cannot be accepted "*

However in a different verdict delivered by Hon'ble Madras HC in the case **Camtex Mills vs Assistant Provident Fund Commissioner -2003(98) FLR 70:2003(2)LLJ 509:2003** the matter was remitted back to the Commissioner for de novo consideration after granting an opportunity ;ruling that "*when a request has been made well in advance for adjournment of proceedings assigning reasons by the establishment ,the Assistant Commissioner should have in fairness granted short adjournment . The proceedings were made as if there had been no request and that no sufficient cause for non-appearance has been shown for the enquiry which cannot be sustained as it is an arbitrary exercise of power and violation of Article 14 of the Constitution. Quasi- Judicial authority should also act reasonably, fairly and should not act in undue haste and arbitrariness. "*

Conclusion

Thus, it can be concluded that adjournments are to be sought by a party only in exceptional circumstances beyond their control and not in a routine manner to delay the proceedings and thus thwarting the wheels of justice. However, adjudicating authorities may allow adjournments to litigants beyond the cap of three adjournments as mandated in Order XVII Rule 1, on bona fide grounds, ensuring principles of natural justice.

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Supreme Court overturns Asian Resurfacing judgment; No automatic vacation of stay orders after six months [Criminal Appeal No. 3589 of 2023 High Court Bar Association, Allahabad vs State of U.P. & Ors.]

Navendu Rai
RPFC-I (Legal)
EPF HQ

In a recent landmark judgment, the Supreme Court of India has reaffirmed the principles of natural justice and due process while addressing the issue of automatic vacation of interim orders passed by High Courts.

The ruling, rendered in High Court Bar Association Allahabad v. State Of Uttar Pradesh & Ors., marks a significant departure from the previous decision in **Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation**

Background: The legal landscape surrounding the automatic vacation of interim orders has been contentious, with divergent views emerging from judicial pronouncements over the years. ***The 2018 decision in Asian Resurfacing had established a precedent whereby interim orders passed by High Courts were deemed to automatically expire after six months, unless extended by an express order.*** However, this recent ruling by a five-judge Constitution Bench of the Supreme Court has overturned the Asian Resurfacing decision, emphasizing the importance of judicial discretion and adherence to principles of natural justice.

Key Findings and Implications:

Principles of Natural Justice: The Supreme Court's judgment underscores the fundamental principles of natural justice in the adjudication of legal matters. It emphasizes that interim orders cannot be vacated merely due to the passage of time but must be subject to a judicial order after hearing the contesting parties. This ensures fairness and procedural integrity in the legal process.

Limitations on Article 142 Jurisdiction: The ruling clarifies the scope of the Supreme Court's jurisdiction under Article 142 of the Constitution. While Article 142 empowers the Court to pass orders to ensure complete justice, the judgment emphasizes that this power cannot be invoked to pass blanket orders that set aside a large number of interim orders without due consideration of the parties involved. This reaffirms the Court's commitment to upholding the rule of law and respecting the rights of litigants.

High Court's Powers under Articles 226/227: The judgment reaffirms the autonomy and authority of High Courts in exercising judicial superintendence over decisions within their jurisdiction. It underscores that the Supreme Court cannot interfere with the High Courts' powers to grant interim reliefs through blanket orders under Article 142, as this forms part of the basic structure of the Constitution. This upholds the principle of federalism and the independence of the judiciary.

Procedure for Granting Stay Orders: The ruling emphasizes the importance of a case-by-case approach in granting or vacating stay orders. It cautions against issuing blanket directions for the speedy resolution of cases and underscores the need for High Courts to apply their minds to the specific circumstances of each case. This ensures that interim reliefs are granted or vacated with due consideration and adherence to procedural fairness.

The judgment delivered by the Supreme Court in the case of High Court Bar Association Allahabad v. State Of Uttar Pradesh & Ors. marks a significant departure from the precedent set by the decision in Asian Resurfacing of Road Agency Private Limited v. Central Bureau of Investigation. While the latter advocated for automatic vacation of interim orders after a specified period, the former emphasizes the importance of procedural fairness and the principles of natural justice.

The Court's ruling underscores the need for a balanced and pragmatic approach in the administration of justice. It recognizes that while the expeditious disposal of cases is crucial, it should

not come at the expense of fairness and equity. By requiring that interim orders be vacated only through a reasoned and speaking order, the Court ensures that the rights of all parties are safeguarded.

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SLP(Crl.) Nos. 5351-5352 of 2024, The State Of West Bengal Versus Ganesh Roy before Hon'ble Supreme Court.

Abhishek Bisht
ASO (Legal)
EPF HQ

In a recent decision, the Supreme Court of India has reaffirmed the necessity for judicious discretion when summoning government officers to court proceedings. The ruling, stemming from a criminal appeal between the State of West Bengal and Ganesh Roy, elucidates the court's stance on the routine practice of High Courts mandating the personal presence of government officials. By delineating the imperative of recording reasons and advocating for the use of video conferencing, the apex court aims to strike a balance between judicial exigency and administrative efficiency.

Background: The genesis of this judicial precedent lies in the case of **State of Uttar Pradesh Vs. Manoj Kumar Sharma**, where the Supreme Court articulated concerns regarding the indiscriminate summoning of government officers by High Courts. The court underscored the adverse implications of such practices, emphasizing the undue burden placed on officials and the potential delay in crucial administrative tasks.

Judicial Pronouncement: Building upon its earlier observations, the Supreme Court, in the case between the State of West Bengal and Ganesh Roy, reiterated its position on the matter. The court deprecated the routine directive of High Courts necessitating the personal appearance of government officers, advocating for a more discerning approach. Drawing from the Standard Operating Procedure (SOP) established in the State of Uttar Pradesh & Ors. Vs. Association of Retired Supreme Court and High Court Judges at Allahabad & Ors., the bench elucidated that personal appearances should be reserved for exceptional circumstances. Emphasizing the importance of recording reasons, the court elucidated that such summonses must be justified by compelling factors, ensuring the efficient administration of justice.

Implications and Significance: This judicial pronouncement bears profound implications for the legal landscape in India. By advocating for the utilization of video conferencing and the meticulous documentation of reasons, the Supreme Court seeks to mitigate the undue strain on government officers while upholding the sanctity of judicial proceedings. This ruling not only reinforces the principle of judicial prudence but also underscores the symbiotic relationship between the judiciary and the executive in facilitating efficient governance.

The Supreme Court's ruling stands as a testament to the judiciary's commitment to fostering a harmonious balance between legal exigencies and administrative imperatives. By delineating clear guidelines and emphasizing the need for judicious discretion, the court sets a precedent that safeguards both the integrity of judicial proceedings and the efficacy of governance. As India navigates the complexities of its legal landscape, this ruling serves as a beacon of judicial wisdom, guiding future adjudications towards a path of equitable justice and administrative efficiency.

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Specific Performance Of Contract Can Be Refused If Suit Wasn't Filed Immediately After Breach Though Within Limitation Period.

[Supreme Court, Civil Appeal No. 7840 Of 2023, Rajesh Kumar Versus Anand Kumar & Ors]

Abhishek Mishra
ASO (Legal)
EPF HQ

The case of Rajesh Kumar vs. Anand Kumar & Ors. Deals with the intricacies of property law, contractual obligations, and the role of Power of Attorney Holders, this case, adjudicated by the Supreme Court of India, provides a compelling narrative of legal interpretation and application.

Background: The matter relates to a dispute over the sale of land, involving multiple parties and contractual agreements. Rajesh Kumar, the appellant/plaintiff, entered into an agreement to purchase land from Anand Kumar and others (respondents/defendants). However, the sale was fraught with complexities, including disputes over ownership, execution of agreements, and adherence to contractual timelines.

Key Issues:

1. **Validity of Agreements:** One of the pivotal issues revolved around the validity of the agreements entered into between the parties. The appellant argued that the agreements were duly executed by the Power of Attorney Holder of the defendants, while the respondents contested the authenticity and legality of these agreements.

2. **Role of Power of Attorney Holder:** The case shed light on the permissible scope of authority and actions of a Power of Attorney Holder. The appellant's reliance on the testimony of their attorney raised questions regarding the admissibility and sufficiency of such evidence in establishing contractual obligations.

3. **Ready and Willing Doctrine:** Central to the dispute was the appellant's assertion of readiness and willingness to fulfill their contractual obligations. However, the absence of the appellant as a witness raised doubts about their commitment to the contract and adherence to its terms.

Legal Precedents: Drawing upon established legal principles, the court referenced past judgments to guide its interpretation and decision-making. Notably, the court cited cases such as **Janki Vashdeo Bhojwani vs. Indusind Bank Ltd. and Man Kaur vs. Hartar Singh Sangha** to delineate the boundaries of a Power of Attorney Holder's role in legal proceedings.

Judicial Analysis: In its judgment, the court meticulously analyzed the evidence presented by both parties and applied legal principles to resolve contentious issues. Emphasizing the importance of adherence to contractual terms and the principle of readiness and willingness, the court elucidated the standards of proof required in cases of specific performance.

Implications and Conclusion: The judgment in Rajesh Kumar vs. Anand Kumar & Ors. underscores the significance of clear contractual agreements, diligent adherence to legal procedures, and the pivotal role of evidence in establishing contractual obligations. It serves as a clarion call for parties to exercise prudence and diligence in their contractual dealings, thereby fostering a robust legal framework conducive to equitable outcomes.

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Statutory Authorities Must Not Defend Their Own Orders in Appeals: A Landmark Ruling by the Supreme Court of India

Abhishek Mishra,
ASO (Legal), EPF HQ

In a pivotal judgment, the Supreme Court of India has clarified the legal boundaries governing statutory authorities in their participation in appellate litigation. This ruling has significant implications for regulatory bodies, particularly those operating in critical sectors such as telecommunications, power, and infrastructure. It emphasizes the distinction between regulatory functions and adjudicatory roles, reshaping how these authorities engage with the appellate process.

Background of the Case

The case originated from a dispute involving the Airports Economic Regulatory Authority of India (AERA), which is responsible for regulating tariffs for aeronautical services at airports. The controversy arose when Delhi International Airport Ltd. (DIAL) challenged AERA's appeal against a TDSAT order, asserting that AERA should not defend its own order as it had originally issued the directive in question.

The respondents contended that allowing AERA to appeal its own decisions would undermine the impartiality expected from regulatory authorities. They argued that this practice could lead to a conflict of interest and hinder fair adjudication in disputes.

The Court's Findings

The Supreme Court's ruling made it clear that AERA's function in tariff determination is fundamentally regulatory rather than adjudicatory. This distinction is crucial, as it informs the nature of AERA's involvement in appellate proceedings. The Court held that:

1. **Regulatory Functions vs. Adjudicatory Roles**: AERA, while issuing tariff orders, operates as a regulatory body focused on economic viability and public interest rather than adjudicating disputes between parties. Consequently, AERA has the right to appeal against decisions that it believes do not align with its regulatory mandate.
2. **Impleading as a Respondent**: The Court emphasized that statutory authorities must be impleaded as respondents in appeals against their orders, particularly when those orders are issued in the exercise of their regulatory functions. This reinforces the accountability of regulatory bodies and ensures that public interests are adequately represented in appellate proceedings.
3. **Impartiality and Transparency**: The ruling underscores the necessity for statutory authorities to maintain impartiality in the appellate process. By not defending their own orders, regulatory bodies can better uphold the principles of fairness and transparency, fostering public trust in the regulatory framework.

Implications for Statutory Authorities

This landmark judgment is poised to influence the approach of statutory authorities across various sectors. Key implications include:

- **Re-evaluation of Litigation Strategies**: Regulatory bodies will need to reassess their strategies regarding how they approach appeals, ensuring that they do not position themselves in a manner that could compromise their impartiality.

- **Increased Accountability**: The requirement for statutory authorities to be impleaded as respondents ensures greater accountability, compelling them to engage more constructively in the appellate process rather than adopting a defensive posture.
- **Broader Precedent**: This ruling may set a precedent for how regulatory bodies in other sectors navigate their roles in litigation, impacting the telecommunications and power sectors where regulatory decisions frequently come under scrutiny.

The Supreme Court's ruling marks a significant step toward clarifying the legal parameters within which statutory authorities operate, reinforcing the importance of impartiality and transparency in regulatory governance. By delineating the boundaries between regulatory and adjudicatory functions, the Court has laid the groundwork for more effective oversight and accountability in regulatory practices.

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MISCELLANEOUS

Civil appeal no. 3752 of 2023 (SLP (c) no.22633 of 2017)- Sree Sankaracharya University vs Dr. Manu on 16 May, 2023 before Supreme Court

Judgement as a Binding Precedent and Ratio Decidendi

CHANDRAMAULI CHAKRABORTY
ACC (HQ), EPFO HEAD OFFICE

Hon'ble Supreme Court has explained the principle which qualify a judgment as a binding precedent. The Supreme Court has explained what is binding in terms of Article 141 of the Constitution is the ratio of the judgment and the *ratio decidendi*[1] of a judgment is the reason assigned in support of the conclusion.

Hon'ble Supreme Court has held that the reasoning of a judgment can be discerned only upon reading of a judgment in its entirety and the same has to be culled out thereafter.

The ratio of the case has to be deduced from the facts involved in the case and the particular provision(s) of law which the court has applied or interpreted and the decision has to be read in the context of the particular statutory provisions involved in the matter.

An order made merely to dispose of the case cannot have the value or effect of a binding precedent. Although the *obiter dictum*[2] of the Supreme Court is binding on all courts, it has only persuasive authority as far as the Supreme Court itself is concerned.

The decision is an authority for what is specifically decides and not what can logically be deduced therefrom. Declaration of the law by the Supreme Court can be said to have been made only when it is contained in a speaking order, either expressly or by necessary implication and not by dismissal *in limine*[3].

1. *ratio decidendi* - The point in a case that determines the judgement or the principle that the case establishes.
2. *obiter dictum –A* remark in a judgment "said in passing" by any judge or arbitrator.
3. *in limine* - devoid of any merit to warrant its admission

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"When Can A Provision Be Deemed As A Clarificatory Having Retrospective Effect"

S. K. AGGARWAL ACC (HQ),
DIRECTOR, PDNASS

Hon'ble Supreme Court, in this judgment, has explained when an amendment can be held to be a clarificatory which has a retrospective effect.

It is a settled law that a clarificatory amendment or an explanation that clears any ambiguity or corrects any glaring omissions in a statute would be applicable retrospectively, but, in the said case, the Supreme Court has now settled the position as to how such a clarification/ explanation to a statute could be identified and distinguished from a substantive amendment to a statute.

The Supreme Court also referred to its previous judgments on the issue in hand and culled out the following legal principles to ascertain when a provision can be held to be merely clarificatory/ declaratory/ explanatory having a retrospective effect:

1. If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.
2. For a subsequent Order/ provision/ amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.
3. An explanation/ clarification may not expand or alter the scope of the original provision.
4. Merely because a provision is described as a clarification/ explanation, the Court is not bound by the said statement in the statute itself but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

A subsequent order/ provision that results in a substantive amendment in the original rule cannot be termed to be merely a clarificatory/ declaratory/ explanatory amendment. It is because such an amendment carries with it, a force to considerably alter the original rule. On the other hand, only amendments that, in nature and purpose, seek to clear doubts or correct an obvious omission in a statute would generally be clarificatory amendments being retrospective in operation.

(Sree Sankaracharya University Vs. Dr. Manu Civil appeal no. 3752 of 2023 (SLP (c) No.22633 of 2017), 16 May, 2023 before Supreme Court)

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'LEGAL FICTIONS' IN THE EPF ACT'

C. Ramesh, Section Supervisor
Regional Office VELLORE

The term *fictio juris* has Latin origins and translates to 'legal fiction' in English. The use of legal fiction dates back to Roman law, where Roman jurists employed legal fiction to address specific issues, facilitate legal transactions, and achieve practical outcomes. Over time, the concept of legal fiction was adapted by various legal systems. The term has endured and continues to be used in contemporary legal practice to describe situations where the law assumes or pretends certain facts to achieve legal objectives. In other words, 'legal fiction' involves assuming or pretending that certain facts are true for legal purposes, even though they may not be true in reality. For example, company law treats a company as a separate legal entity distinct from its directors or shareholders. This legal fiction allows the company to enter into contracts, own property, and sue or be sued as if it were a natural person. In criminal law, the presumption of innocence until proven guilty is a legal fiction. The accused is treated as if they are innocent until the prosecution proves their guilt beyond reasonable doubt. Legal fictions serve the purpose of providing clarity, consistency, and practicality in legal systems. They are tools used by lawmakers to bridge the gap between the legal provisions and the complexities of real-world situations.

Legal Fiction in Section 405 of IPC

Explanation to Section 405 of the Indian Penal Code provides that a person, being an employer who deducts the employees' contribution from the wages payable to the employee for credit to a Provident Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law. Here, the legal fiction lies in the phrase "*shall be deemed to have dishonestly used the amount*." This suggests that, regardless of whether the employer misused the funds or used them appropriately for the employee's benefit, such as addressing urgent wage arrears, there will always be an assumption of misappropriation.

Legal Fiction in Section 8-F of the EPF Act

Clause (x) of Section 8-F of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 stipulates that if the individual receiving a notice under this sub-section neglects to make the required payment to the Central Provident Fund Commissioner or the designated officer, they will be considered an employer in default concerning the specified amount in the notice. The legal fiction is created by deeming the individual to be an 'employer in default' even if they might not fit the traditional definition of an employer or default. This legal construct is established for the purpose of initiating further proceedings and taking legal actions to recover the specified amount as if it were an arrear due from the person. In essence, the law creates a fictional status (employer in default) for the individual who fails to employ with the notice, and this fictional status triggers legal consequences and procedures for the recovery of the amount specified in the notice.

Legal Fiction in Para 32 of the EPF Scheme

Sub-Clause (3) of Paragraph 32 of the Employees' Provident Funds Scheme, 1952 mentions that any sum deducted by an employer or the contractor from the wages of an employee under the Scheme shall be deemed to have been entrusted to him for the purpose of paying the contribution in respect of which it was deducted. Here, the legal fiction lies in the phrase "shall be deemed to have been entrusted with the amount." This implies that, by deducting the employees' contribution from their wages for credit to the Provident Fund, the employer is treated as if they have been entrusted with the amount of the contribution. It creates a legal assumption that the employer holds these deducted funds in trust for the specified purpose and emphasises the serious nature of their obligation to remit it to the Provident Fund.

In conclusion, the concept of 'legal fiction' plays a crucial role in the interpretation and application of laws, bridging the gap between legal provisions and the complexities of real-world scenarios. As evidenced in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, legal fictions are strategically employed to facilitate the enforcement of regulations and ensure the smooth functioning of provident fund schemes. Whether deeming an employer to be in default for non-compliance with a notice or treating deducted sums as entrusted funds, these legal constructs serve to impose obligations, create assumptions, and trigger specific legal consequences. While legal fiction may simplify legal processes, it also underscores the importance of precision and careful consideration in the crafting and interpretation of legal provisions, striking a delicate balance between legal pragmatism and the pursuit of justice.

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‘LEGAL MAXIMS & JUDICIAL DECISIONS CONCERNING EPF ACT’

C. RAMESH, SECTION SUPERVISOR
REGIONAL OFFICE VELLORE

Legal maxims are concise expressions of fundamental principles in the field of law. Often expressed in Latin, these short and pithy statements encapsulate centuries of legal wisdom and serve as guiding principles for legal reasoning and decision-making. They are the distilled essence of legal concepts, offering clarity. Through their timeless nature, these maxims transcend specific jurisdictions and legal systems, forming a universal language of legal principles. This article delves into specific EPF-related cases where these principles have been applied.

No one should have an Advantage from his Own Wrong.

In *Hindustan Steel Works Construction Limited vs Regional Provident Fund Commissioner and another* [Writ Petition No.26081 of 2015], the Petitioner contended that he had not maintained the records relating to the employees engaged through the contractors and hence, could not produce the records before the assessing authority. Here, the Calcutta High Court discussed the legal principles applied by the Supreme Court in Indrajit *Singh Grewal vs State of Punjab and others* [2011 12 SCC Page 588]. It emphasised that a person alleging their own wrongdoing should not be heard, and actions arising from immoral causes are not justifiable. The Supreme Court mentioned the following legal maxims:

1. *Allegans suam turpitudinem non est audiendus*: This translates to "One alleging his own shame is not to be heard." It reflects the principle that a person trying to benefit from their own wrongdoing or misconduct should not be given a hearing or allowed to make a claim based on their own disreputable actions.
2. *Commondun ex injuria sua nemo habere debet*: This can be translated as "No one should have an advantage from his own wrong." It emphasises that a person should not be allowed to profit or gain an advantage due to their own wrongful or unlawful actions.
3. *Ex turpi causa non oritur action*: Translated as "No action arises from an immoral cause," this maxim signifies that a legal claim or action cannot be based on an immoral or illegal foundation. Courts generally do not entertain lawsuits that arise from wrongful, unlawful, or immoral conduct.

In applying the legal principle of " No one should have an advantage from his own wrong," it becomes evident that the principal employer in the *Hindustan Steels Works* case cannot be allowed to benefit from its failure to maintain records under Section 7-A of the EPF & MP Act, 1952. The principle underscores that an individual or entity should not derive an advantage or benefit from its own wrongdoing. Therefore, the High Court's order aligns with this principle, emphasising that the principal employer, having failed to maintain proper record-keeping practices, should not be permitted to exploit this shortcoming to evade EPF liability.

The Law is Hard, but It is the Law.

"*Dura lex sed lex*" is a Latin legal maxim that translates to "the law is hard, but it is the law." This phrase encapsulates the idea that, even if the law seems harsh or strict, it must be followed and upheld. It underscores the principle that legal decisions and regulations may be stringent or uncompromising, but they are binding and must be respected. It reflects the importance of adhering to the rule of law, regardless of personal opinions or feelings about the strictness of the legal provisions.

In the case of *Central Board of Trustees vs S.K. Nasiruddin Biri Merchant Private Limited* [CWJC No.20579 of 2014], the Patna High Court ruled that the Appellate Tribunal, acting under the EPF & MP Act, 1952, lacked the authority to excuse a delay beyond the 120-day limit stipulated by Rule 7 of the Tribunal Rules, 1997. The court held that the Appellate Tribunal had committed a

serious error in condoning the delay in filing the appeal and permitting its continuation. In this case, the High Court invoked the legal maxim "dura lex sed lex," signifying that while the law may be stringent, it must be upheld without compromise. The Delhi High Court, in the case of *Jharkhand Urja Viakas Nigam Limited vs Regional Provident Fund Commissioner, Ranchi* [Writ Petition No.4983 of 2018], adopted a parallel stance, asserting that the element of inconvenience should not serve as a determining factor when interpreting a statute. In the case of *Laxmibai K vs Provident Fund Commissioner, Hyderabad, and another* [2006 (1) LLJ 27], the Andhra Pradesh High Court ruled that, despite the petitioner's deserving sympathy for seeking a pension to which they were not entitled, relief could not be granted in violation of the law.

No man shall be Put Twice in Peril for the Same Offence.

Article 20(2) of the Indian Constitution stipulates that no individual shall face prosecution and punishment for the same offence more than once. This principle, known as the Doctrine of Double Jeopardy and encapsulated in the legal maxim "*nemo debet bis vexari*," emphasizes that no person should be subjected to jeopardy twice for the same wrongdoing. The underlying objective is to prevent harassment arising from successive criminal proceedings when an individual has committed a single crime.

In the case of *R.B.H.N. Jute Mills vs Regional Provident Fund Commissioner*, [(1958) 1 LLJ 598] a Division Bench of the Patna High Court ruled that an employer cannot claim the protection of Article 20(2) by arguing that Section 14-B of the EPF & MP Act, 1952, deals with the same offence as Paragraph 76 of the EPF Scheme. The safeguard provided by Article 20(2) is applicable only if there is a legal prosecution and punishment for the same offence in a court of law or a judicial tribunal.

Private agreements do not derogate from public law.

"*A pactis privatorum publico juri non derogatur*" is a Latin legal maxim that translates to "Private agreements do not derogate from public law." This principle reflects the idea that private agreements between individuals cannot override or undermine public laws or legal principles. In other words, individuals cannot enter into private agreements that violate or contradict the fundamental principles of public law. If a contract violates the statutory provisions, no court can assist in enforcing such an agreement. It also means that parties cannot contract out of the statute in a way that renders the statutory provisions ineffective.

For instance, an employer and his employees cannot have a valid contract that they will not contribute toward the EPF Scheme, which otherwise is applicable. Simply because the employer and the employees, by agreement, desire that contribution is not payable in respect of payment, liability under the Act cannot be avoided if such payment answers the definition of ‘basic wages.’ If the employer and the employees can, by agreement, prevent the payment of contribution in respect of specific payment that is against the provisions of the Act, and in fact, would lead to disastrous results. [*Regional Provident Fund Commissioner vs The Administrator, Cosmopolitan Hospital*, 2009 LLR 1271 (Ker. HC)]

A New Enactment Should Establish Rules for the Future, not the Past

The Latin expression "*nova constitution futuris formam imponere debet non praeteritis*" translates to "a new constitution should establish rules for the future, not the past" in English. This conveys that when formulating a new constitution or legal framework, the emphasis should be on creating regulations and guidelines for upcoming events and circumstances rather than fixating on past situations. It suggests an orientation toward the future in the construction of legal systems.

Section 16(1)(d) of the EPF & MP Act, 1952 provided protection from coverage of the newly set up establishments for an initial period of three years as a breathing time. Section 16 was amended by the Amendment Act, 1998, omitting clause (d) with effect from 22nd September 1997. In *Sangam Spinners vs Regional Provident Fund Commissioner*, [2008(1) SCT 148:2008(1) SCC 391], the Supreme Court, citing the legal maxim – *nova constitution futuris forman imponere debet non*

praeteritis – held that the appellant shall be entitled the protection for three years starting from the date of setting up, irrespective of the repeal of the provision for such infancy protection.

The EPF Act and its legal intricacies might seem confusing, but the legal maxims we have discussed act like foundational building blocks. They provide a strong base for us to understand and interpret the rules within the EPF Act. These legal maxims not only help in understanding and interpreting the rules in the EPF Act but also serve as essential tools to effectively defend the case of the EPFO before different legal forums.

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[Civil Appeal No. 9941 of 2016 Mary Pushpam vs Telvi Curusumary & Ors.] HC Bench Bound By Judgment Of Coordinate Bench : Supreme Court stresses importance of 'judicial discipline'

Chandramauli Chakraborty,
ACC(HQ), Legal
EPF HQ

The Supreme Court, in its recent judgment, highlighted the importance of ensuring judicial discipline. The Court went on to observe that when a decision of a coordinate Bench of same High Court is brought to the notice, it is to be respected and is binding on the bench

Factual Matrix :-

The judgment revolves around a property dispute between Mary Pushpam, the appellant, and Telvi Curusumary & others, the respondents. The case originated from a civil suit filed by the appellant, seeking a declaration of title, possession, and permanent injunction against the respondents. The backdrop includes a prior successful defense by the appellant in a suit for ejectment initiated by the respondents.

The judgment underscores the significance of **'Judicial Discipline'** and the Doctrine of Precedents, emphasizing their role in ensuring consistency and certainty in judicial decisions.

The court acknowledges the rule that decisions of co-equal benches are to be respected, but there is a provision for a larger bench to review and potentially alter such decisions.

The Trial Court framed six key issues, including matters related to property ownership, the interpretation of a previous High Court judgment, possession, and entitlement to relief. The judgment extensively analyzes the High Court's earlier decision from March 30, 1990, noting that it explicitly identified the disputed property as comprising 8 cents of land.

The Doctrine of Merger is applied, asserting that judgments of lower courts are absorbed into the final judgment of a higher court. The 1990 High Court judgment is deemed final and binding in the current litigation. The judgment criticizes the Trial Court and High Court in the present round for deviating from the earlier judgment, highlighting a violation of judicial discipline.

The respondents' argument that the High Court's mention of 8 cents of land was a bona fide error is rejected. The judgment accentuates that the 1990 judgment unequivocally determined the property's extent and any reinterpretation would be a breach of judicial discipline.

In its decision, the Supreme Court sets aside the impugned judgment of the High Court and reinstates the judgment of the Trial Court dated October 13, 2003. The detailed analysis underscores the legal principles governing the case, focusing on judicial discipline, adherence to precedents, and the authoritative nature of earlier judgments.

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Aureliano Fernandes vs. State of Goa and Others: Civil Appeal No. 2482 Of 2014; May 12, 2023:- A Landmark Ruling Reshaping Workplace Harassment Compliance

Abhishek Bisht,
ASO Legal
EPFO HQ

In a recent judgment that reverberates across workplaces, the Supreme Court of India, in the case of Aureliano Fernandes vs. State of Goa and Others (Civil Appeal No. 2482 of 2014), delivered a pivotal ruling addressing the shortcomings in the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act). The case sheds light on the challenges faced in ensuring a harassment-free workplace and underscores the imperative for strict adherence to the law.

Background: The case originated from an inquiry initiated against Mr. Aureliano Fernandes, an employee at Goa University, following multiple complaints of sexual harassment from female students. The internal committee, after an ex-parte order against the appellant due to his absence during inquiry proceedings, recommended termination of his services. Subsequently, the High Court upheld the decision, leading to the appellant challenging it before the Supreme Court.

Supreme Court's Observations: The Supreme Court, in its ruling, expressed concern over the inadequate implementation of the POSH Act even a decade after its formulation. It criticized the haste in which the inquiry against Fernandes was conducted, emphasizing the violation of principles of natural justice and the denial of a fair opportunity for the appellant to present his case.

Key Directions Issued: To remedy the situation, the Supreme Court issued several directions aimed at enhancing the enforcement of the POSH Act. Notable directives include:

1. **Verification Exercise:** The Union of India, State Governments, and Union Territories were instructed to undertake a time-bound exercise to verify the constitution and composition of Local Committees (LCs) or Internal Committees (ICs) in various organizations.
2. **Information Accessibility:** Authorities were mandated to make information about LCs/ICs, designated contact details, online complaint procedures, and relevant rules readily available on their official websites, with periodic updates.
3. **Training and Orientation:** Employers and authorities were directed to take immediate and effective steps to familiarize committee members with their duties and ensure regular orientation programs, workshops, and seminars to educate employees about the POSH Act.
4. **Strict Adherence to POSH Act:** The Supreme Court stressed the need for strict adherence to the enforcement regime by all State and non-State actors, highlighting that the success of the POSH Act in providing dignity and respect to women at the workplace depends on such adherence.

Implications for Private Establishments: While the Court's directions primarily focused on public institutions, it explicitly reminded private establishments of the equal applicability of the POSH Act to them. The ruling serves as a wake-up call for private employers to review their compliance with the Act, undertake necessary measures, and mitigate reputational risks associated with non-compliance.

The Aureliano Fernandes case stands as a watershed moment in the legal landscape surrounding workplace harassment. The Supreme Court's stringent directives signal a renewed commitment to enforcing the POSH Act and ensuring the safety and dignity of women in workplaces across the country. As organizations navigate the aftermath of this landmark ruling, the emphasis on proactive measures, education, and strict adherence to legal obligations becomes more crucial than ever.

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Writ of Habeas Corpus and its Intricacies in the Context of EPF Act

C. Ramesh,
SS, RO, Vellore.

Habeas corpus is a legal recourse that safeguards an individual's right to personal freedom and protects against unlawful detention or imprisonment. The term "*habeas corpus*" is Latin for "you shall have the body," emphasising the right of an individual to have their physical liberty protected. The primary purpose of *habeas corpus* is to ensure that a person is not held in custody without proper legal authority. It acts as a check against arbitrary or unlawful detention, providing a means for individuals to challenge the legality of their imprisonment.

Pursuant to the provisions delineated in the Employees' Provident Funds and Miscellaneous Provisions Act, the apprehension of an individual may arise in two distinct scenarios. In the event that an individual duly summoned by the inquiry authority in accordance with Section 7-A of the Act neglects to attend the inquiry without valid justifications, the inquiry officer is empowered to issue an order for the arrest and subsequent detention of the summoned individual in a civil prison, thereby enforcing the attendance of the person summoned. Alternatively, the second circumstance leading to apprehension involves a defaulter who fails to remit the statutorily mandated dues. In such cases, the designated Recovery Officer is authorized to issue an order under Section 8-B of the Act for the arrest of the defaulter, subsequently directing their detention in a civil prison. This coercive measure is undertaken to secure compliance with the obligation to remit statutory dues.

Due process of law should be followed scrupulously

In *Kanaiyalal Prabhudas Maru vs Regional Provident Fund Commissioner* [2002–1-LLJ-297], the Bombay High Court held, before issuance of the warrant of arrest against the defaulter under Section 8-B of the Act, the conditions specified in Rule 73(1)(a) and (b) of Part V of Schedule II to Part V Rule 73 are required to be complied with. The non-compliance thereof vitiates the proceedings of issuance of the warrant. Arrest and detention in prison by an order beyond the authority of law or not supported by the due process of law will entitle the defaulter to get relief under Article 21 of the Constitution by way of a Writ of *Habeas Corpus*.

Detention for Non-Appearance only

The authority to arrest and detain in a civil prison, as granted by Section 32(d) of the Civil Procedure Code, is exclusively for ensuring the attendance of summoned individuals, not for the non-production of records or documents. Section 32(d) of the Civil Procedure Code provides the exclusive provision for detaining an individual in a civil prison. This section grants the Court the authority to compel the attendance of a person who has been served with summonses under Section 30. The Court can instruct the person to furnish security for appearance, and if they default, the Court can order their confinement in a civil prison. The limitation of this authority is emphasised by the phrase "for that purpose," indicating that the Court's power to detain is solely to ensure the individual's attendance, with no provision for imprisonment if summoned records or documents are not produced. Rule 18 of Order XVI in the Civil Procedure Code supplements this understanding. The authority granted by Order XVI, Rule 18 is invoked by the Court to secure the person's appearance, not in cases where they fail to produce summoned documents or records. [*Vinod Tiwari Vs. Employees Provident Fund Organisation and another* (2006) 3 JLJ 8]

No estoppel against statutory dues

In *Jatinder Singh Saini and another vs Regional Provident Fund Commissioner, Punjab and another*, the two petitioners, Jatinder Singh Saini and Vivek Goel, sought relief under Articles 226 & 227 of the Constitution of India regarding their liability to pay Employees Provident Fund (EPF) contributions. Considering the petitioner's statutory obligations, the court held that the liabilities were statutory and that no estoppel could be claimed against the statute. The court dismissed the petitioner's claim that

the inability to make payments should exempt them from legal consequences. The court emphasised that the demand by respondents was based on a statutory assessment order not complied with by the petitioner. Consequently, the court found no merit in the case and dismissed the petition.

Defaulters cannot be arrested without a Warrant of Arrest

In the case of *Ramesh Singhania vs Union of India and others*, [LAWS(RAJ)1996-5-68], the petitioner filed a Habeas Corpus petition challenging the arrest and detention of his friend (a defaulter under the EPF Act) by the Recovery Officer of EPFO. The petition alleged that the employer had been apprehended and transported in a private taxi to the District Jail, Bikaner. The jail authorities declined to admit the petitioner, leading to his confinement in a room at the Circuit House. When the detainee's friends and relatives objected, they were informed that the arrest was due to the defaulter's failure to pay EPF dues. The Rajasthan High Court held that the Recovery Officer's actions, such as arresting the defaulter without a proper warrant and secretly housing him in the Circuit House, were entirely outside the bounds of legal procedure and constituted an extra-judicial act.

Woman cannot be arrested

A judgment debtor who is a woman enjoys statutory protection against her arrest and detention in civil prison in the execution of a decree for money given the embargo under Section 56 of the Civil Procedure Code, 1908. Even a notice to show cause under Order 21, Rule 37 of the CPC cannot be issued to the judgment debtor, a woman.

Writ against Show Cause Notice of arrest (CP 25) – Premature

In *ATV Projects India Ltd. vs Office of the Regional Provident Fund Commissioner, Mumbai*, [2005(1) MhLJ 791], the Petitioner filed a *Habeas Corpus* petition against the CP-25 (Show-Cause notice before arrest of the defaulter). The Bombay High Court dismissed the Petition, observing that it was too premature to entertain Writ. The Recovery Officer has yet to apply his mind to the facts of the case. He is yet to hear the petitioners, and the petitioners will have ample opportunity to put forth their say in the case before the Recovery Officer, who is also in a position to assess the factual situation and to arrive at the proper fining on the materials to be placed by the petitioners in response to the show-cause notice.

Simultaneous arrest and attachment of property are not permissible

In *D.R. Venkatesh vs Regional Provident Fund Commissioner and another* [2004 LLR 1148] the Andhra Pradesh High Court held that the legislature makes the employer personally liable for the payment of the provident fund arrears only if the properties of the establishment are insufficient. Therefore, the attachment of property and the arrest of the employer cannot be simultaneous.

Arrest is Imminent only when Means Exists, but Payment is Neglected

The provisions under the Second and Third Schedule of the Income Tax Act are identical to the provisions of Section 51 of the Civil Procedure Code. Only when there is sufficient material available with the Recovery Officer that the defaulter tries to escape the clutches of law by resorting to unfair means of selling his property clandestinely or surreptitiously or where he fails to pay the dues though he has the means to pay, only in such cases, the extreme step of arrest has to be resorted to. [*Hotel Horizon Private Limited and others vs Union of India and others*, 2007(3) LLJ 584]. In *Jagadish Roy vs The Regional Provident Fund Commissioner* [(2006) 3 CAL LT 411 (HC)], the Calcutta High Court held that in the absence of any finding of having sufficient means of the petitioner to satisfy the certificate dues or the substantial part thereof, the finding regarding the petitioner’s neglect or failure to satisfy the certificate dues becomes illusory.

In striking a delicate balance between employers' personal freedom and workers' social security rights, the writ of *habeas corpus* emerges as a crucial instrument. The legal framework, as discussed, underscores the importance of due process and adherence to established rules to prevent arbitrary or

unlawful detentions. This balance is not only reflected in recognition of statutory protections, such as the exemption of women from arrest but also in the cautious approach of the Recovery Officer. It becomes evident that the enforcement of social security measures must harmonise with the protection of individual freedoms. Ultimately, the application of the writ of habeas corpus ensures an equilibrium, reinforcing the notion that upholding personal liberty is integral to a just and balanced implementation of the EPF Act.

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Judicial Doctrines

Abhishek Mishra
ASO (Legal)
EPF HQ

Legal doctrine is the currency of the law. In many respects, doctrine is the law, at least as it comes from courts. Judicial opinions create the rules or standards that comprise legal doctrine.

In Indian Constitutional law also, there are different judicial doctrines that develop over time as per the interpretation given by the judiciary.

Some of the important judicial doctrines are discussed in this article.

1.	**Doctrine of Basic Structure**	In Kesavananda Bharati case 1973, the Supreme Court of India for the first time ruled that the parliament has the power to amend any part of the constitution but it cannot alter the "basic structure of the constitution". The constituents of basic structure are not clearly defined by the Supreme Court of India. Parliamentary democracy, fundamental rights, secularism, federalism, judicial review etc. are all held by courts as the basic structure of Indian Constitution.
2.	**Doctrine of Separation of Powers**	It mainly signifies the division of powers between various organs of the state; executive, legislature and judiciary. **[Ram Jawaya v. State of Punjab (1955) case]** Separation of powers signifies mainly three formulations of Governmental powers: ✓ The same person should not form part of more than one of the three organs of the state. ✓ One organ should not interfere with any other organ of the state. ✓ One organ should not exercise the None.
3.	**Doctrine of Pith and Substance**	Pith means **'true nature'** and Substance means **'the most important or essential part of something'**. The Doctrine of Pith and Substance is usually applied where the question arises of determining whether a particular law relates to a particular subject (mentioned in Seventh Schedule), the court looks to the substance of the matter. Apart from its applicability in cases related to the competency of the legislature **(Article 246)**, the Doctrine of Pith and Substance is also applied in cases related to repugnancy in laws made by Parliament and laws made by the State Legislatures **(Article 254).** The doctrine is employed in such cases to resolve the inconsistency between laws made by the Centre and the State Legislature. In **Prafulla v. Bank of Commerce (1946)**, the SC held that a State law, dealing with money lending (a State subject), is not

		invalid, merely because it incidentally affects promissory notes.
4.	**Doctrine of Incidental or Ancillary Powers**	It has developed as an addition to the Doctrine of Pith and Substance. This doctrine is invoked when there is a need to aid the principal legislation in question. The Doctrine of Pith and Substance deals only with subjects but the Doctrine of Incidental or Ancillary Powers deals with the power to legislate on such subjects and the matters connected thereto. The SC in the **State of Rajasthan v. G Chawla (1958)** stated: "The power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given."
5.	**Doctrine of Severability**	It is also known as the doctrine of separability. As per clause (1) of the Article 13 of the Constitution, if any of the laws enforced in India are inconsistent with the provisions of fundamental rights, they shall, to the extent of that inconsistency, be void. The whole law/act would not be held invalid, but only the provisions which are not in consistency with the Fundamental rights [**A.K. Gopalan v. State of Madras (1950)]**
6.	**Doctrine of Eclipse**	It is applied when any law/act violates the Fundamental Rights (FR). In such a case, the FR overshadows the law/act and makes it unenforceable but not void ab initio (Having no legal effect from inception). They can be reinforced if the restrictions posed by the fundamental rights are removed.
7.	**Doctrine of Territorial Nexus**	It says that laws made by a State Legislature are not applicable outside the state, except when there is a sufficient nexus between the state and the object. The doctrine derives its power from Article 245 of the Indian Constitution. Article 245 (2) provides that no law made by the Parliament would be invalid on the ground that it would have extra-territorial operation i.e. takes effect outside the territory of India. In **A.H. Wadia v. Income Tax Commissioner (1948)**, it was held that a question of extraterritoriality of enactment can never be raised against a Supreme Legislative Authority on the grounds of questioning its validity.
8.	**Doctrine of Colourable**	The Doctrine of Colourable Legislation comes into play when a Legislature does not possess the power to make law upon a

	Legislation	particular subject but nonetheless indirectly makes one. By applying this principle the fate of the Impugned Legislation is decided. This Doctrine traces its origin to a Latin Maxim which, in this context, implies: **"Whatever legislature cannot do directly, it cannot do indirectly".** The doctrine is usually applied to Article 246 which has demarcated the Legislative Competence of the Parliament and the State Legislative Assemblies by outlining the different subjects under Union list, State list and Concurrent list.
9.	**Doctrine of Pleasure**	The doctrine of pleasure has its origins in English law as per which, a civil servant holds office during the pleasure of the Crown. Under Article 155, the Governor of a State is appointed by the President and holds the office during the pleasure of the President. Under Article 310, the civil servants (members of the Defence Services, Civil Services, All-India Services or persons holding military posts or civil posts under the Centre/State) hold office at the pleasure of the President or the Governor as the case may be. Article 311 places restrictions on this doctrine and provides safeguards to civil servants against any arbitrary dismissal from their posts.
10.	**Doctrine of Harmonious Construction**	○ The term harmonious construction refers to such construction by which harmony or oneness amongst various provisions of an enactment is arrived at. ○ When the words of statutory provision bear more than one meaning and there is a doubt as to which meaning should prevail, their interpretation should be in a way that each has a separate effect and neither is redundant or nullified. ○ The evolution of the doctrine can be traced back to the very first amendment made in the Constitution of India with the landmark judgment of Shankari Prasad v. Union of India. ○ In the Kerala education bill 1951 case it was held that in deciding the fundamental rights the court must consider the directive principle and adopt the principle of harmonious construction. So, two possibilities are given effect as much as possible by striking a balance.

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Understanding Plea Bargain: Implications for EPFO

D. Ramesh,
SS, RO, Vellore.

Plea Bargain is a process of negotiations between the prosecution and the accused, resulting in the accused pleading guilty for a promise to reduce the charge, drop some of the charges or get a lesser punishment. Thus, if A is to be tried for non-payment of the statutory dues and non-submission of the statutory returns, he may agree to plead guilty if he had complied with the statutory provisions for the violations of which the prosecution complaints were filed. In its actual working, sometimes, many more promises are added. The accused may additionally agree to pay the penal damages and interest or adhere scrupulously to the Act/Scheme provisions and further undertake to compensate for expenses incurred in relation to the case. As a result of the bargain, the prosecutor may agree (a) to reduce the charge, (b) to drop one or more charges, or (3) to recommend lesser punishment, or may agree to more than one of these.

Development of Plea Bargain within the Indian Legal Framework

Basically, in India, the trial court holds exclusive authority to determine the offences for which the accused will stand trial. The prosecutor's role is confined to aiding in this decision-making process. Any agreements between the prosecutor and the accused are only valid if legally permitted and officially documented in court records. The prosecutor lacks the autonomy to enforce such agreements independently. Thus, the conviction and sentencing of individuals must adhere strictly to the established legal procedures, which are required to be reasonable and equitable.

Initially, the concept of Plea Bargain was not sanctioned by the Indian judiciary and was viewed as contrary to public policy. In the case of *Murlidhar Meghraj Loya vs State of Maharashtra* [AIR 1976 SC 1929], the Supreme Court remarked that a structured procedure must be developed for the state to administer justice through Plea Bargain. However, in *Kasambhai Abdul Rahman Bhai Sheik vs State of Gujarat* [(1980) 3 SCC 120], the Supreme Court deemed the Plea Bargain as unconstitutional, illegal, and potentially fostering corruption, collusion, and undermining the integrity of justice. Furthermore, in *Utter Pradesh vs Chandrika* [AIR 2000 SC 164], the Supreme Court affirmed that it is established jurisprudence that criminal cases cannot be disposed of solely on the basis of Plea Bargain. The mere admission of guilt should not warrant a reduction in sentence, nor should the accused be permitted to negotiate with the court for leniency based solely on their guilty plea. However, recognising the substantial backlog and prolonged delays in the adjudication of criminal cases, and in line with the recommendations of the Justice Malimath Committee on Reforms of the Criminal Justice System, a new Chapter XXI-A (Sections 265-A to 265-L) concerning Plea Bargain was incorporated into the Code of Criminal Procedure, effective from July 5th, 2006 by virtue of Criminal Law (Amendment) Act,2005. In the case of *Subhash Popatlal Dave vs. State of Gujarat* [(2014) 1 SCC 280], the Supreme Court reiterated the constitutional validity of Plea Bargain, underscoring its necessity to be executed willingly and comprehensively understood by the defendant regarding its ramifications. The Court further underscored its significance as a mechanism for alleviating case backlogs and fostering expedient and effective justice delivery.

Procedural Steps Involved in Plea Bargain

Section 265(A) of the Cr. P.C. outlines the conditions for a Plea Bargain, allowing individuals charged with offences not punishable by life imprisonment, imprisonment exceeding seven years, or death to seek a Plea Bargain once the magistrate has taken cognisance of the case or the police has submitted a final report. Section 265(B) specifies that accused individuals may file Plea Bargain applications through their lawyers before trial. The magistrate must ensure the application is voluntary, rejecting it if the accused has prior convictions for the same offence. The court schedules a hearing where the accused and complainant appear, and the magistrate investigates the voluntariness of the application. Section 265(C) mandates negotiations or agreements between the accused and the victim, ensuring they are voluntary. If initiated by a police report, the court involves the police officer, whereas if initiated by a complaint, it involves the victim. Section 265(D) deals with the submission

of negotiation reports signed by all parties to the court. If no agreement is reached, the court proceeds with normal trial procedures. Section 265(E) stipulates that if an agreement is reached, the court dismisses the case and orders compensation decided during negotiations. The court considers factors like the accused's conduct and time served when determining the punishment, potentially reducing it by half or one-fourth. Sections 265(F)-265(L) require the court to deliver the judgment in an open court, signed by the presiding officer, and prohibit further appeals, making the judgment final.

Should the accused express a voluntary desire to enter a guilty plea pursuant to the aforementioned provisions, they shall submit an application to the trial court accompanied by an affidavit detailing their case. This affidavit must affirm (i) the voluntary nature of the application, (ii) the understanding of the nature of the sentence, and (iii) the absence of prior convictions for the same offense. Upon receipt of the application and affidavit, the trial court shall issue notices to both the public prosecutor (the complainant in private complaints such as those of the EPFO) and the accused, requiring their appearance on the scheduled hearing date. The court shall conduct an in-camera examination of the accused to ascertain that the application was submitted voluntarily and that the accused meets the criteria for such submission. Should the court determine that the application was not submitted voluntarily or that the accused has a previous conviction for the same offense (indicating chronic default), the application shall be rejected, and the case shall proceed to a regular trial. The court will pronounce its judgment in an open session, which the presiding officer will endorse. This judgment shall be conclusive, barring any appeal except through a writ petition under Articles 226 and 227 of the Indian Constitution or a Special Leave Petition under Article 136 of the Indian Constitution.

Conditions for Filing Plea Bargain Application

Any individual aged 18 years or older facing pending trial proceedings may submit a plea-bargaining application, subject to certain conditions. Notably, the offence in question must carry a maximum sentence of fewer than 7 years; thus, offences with a maximum prescribed imprisonment exceeding 7 years do not qualify for Plea Bargain. Additionally, the offence should not involve a victim who is a woman or a child under 14 years of age, nor should the accused fall under the purview of Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Furthermore, the accused should not have a prior conviction for the same offense, and the offense should not significantly impact the socio-economic welfare of the nation.

Plea Bargain in the Context of EPFO

The potential of Plea Bargain as a means to alleviate the litigation burden on EPFO was initially proposed during the 230th meeting of the Central Board of Trustees (CBT). During this session, it was proposed that both arbitration and Plea Bargain could serve to diminish EPFO's litigation workload. Thereafter, the Ad-hoc Committee on Coverage and Related Litigation recommended that the EPFO should bring out a policy for Alternative Disputes Redressal (ADR) including Plea Bargain. Later, as an effective means of Alternative Disputes Redressal (ADR) mechanism, Plea Bargain was introduced in the Legal Framework Document (LFD) of the EPFO.

Whenever a notice is issued by the trial court conducting the trial in any of the prosecutions instituted at the behest of any functionary of EPFO, the approach should be to constructively engage with the process of Plea Bargain to amicably resolve the issue of default by the employer concerned, the LFD declares. It further outlines the following procedural steps to follow up with the plea bargain petitions.

(a) Whenever a notice is received from the trial court on an application submitted by the accused, the same shall be submitted for orders of the Regional Provident Fund Commissioner-I of the region by the section concerned without any loss of time and in no case later than three working days from the receipt of the said notice. [Pertinent to mention here that the plea-bargaining process can be initiated only by the accused and not by the prosecution in India].

(b) The RPFC-I In-charge of the region shall be the final decision taking authority on the application of the Plea Bargain submitted by the accused.

(c) In cases where the subject matter of the prosecution was default in remittance of contribution, the application for plea bargain should be consented to only after ascertaining that the entire amount of default which was the subject matter of the prosecution has been remitted by the accused. For levying damages and interest, separate proceedings may be initiated.

(d) In cases where the prosecution is for any other contravention, it should be ensured that the default, which was the subject matter of the complaint, has been made good by the accused at the time of consideration of the request for a plea bargain.

(e) On satisfaction that the contraventions on account of which prosecution was instituted have been made good, the RPFC may communicate the consent of the EPFO for such plea bargain to be communicated to the competent court. Upon approval of RPFC-I, it shall be the duty of the branch officer (APFC (Legal)) to send to the trial court, through the panel advocate/Enforcement Officer, the consent of EPFO for such plea bargain.

(f) The advocate/EO conducting the case must be suitably briefed to accept the plea bargain application subject to the conditions of consent enumerated above. An adequate amount of compensation to recompense the cost of pursuing the prosecution case must also be sought from the court in response to the plea bargain application submitted by the accused.

Upon reaching mutual satisfaction, the trial court formalises the agreement through a report signed by all parties involved, including the presiding officer. The accused may receive a prison sentence equal to half of the minimum term established for the offense. In the absence of a prescribed minimum term, the sentence may extend to one-fourth of the maximum term specified by law. Additionally, the resolution may entail the payment of compensation and other expenses incurred by the victim imposed upon the accused. It is essential to emphasise that in cases where the prosecution has lodged complaints inclusive of Section 14-AA [*Enhanced Punishment in Certain Cases After Previous Conviction*], the application of Plea Bargain is precluded.

Conclusion

The plea-bargaining process facilitates the Employee Provident Fund Organisation (EPFO) in securing compliance and obtaining compensation through a mutually satisfactory resolution, thereby averting protracted judicial proceedings. On the defendant's side, in cases where a minimum penalty is stipulated for the offence (such as the one-year imprisonment minimum under Section 14(1)(a) of the EPF Act for defaulting on employees' EPF contribution payments), the accused may be sentenced to half of the prescribed penalty. In instances where no minimum penalty is specified, the defendant may be subject to one-fourth of the prescribed penalty.

In conclusion, Plea Bargain offers a practical method within the legal structure for the Employee Provident Fund Organisation (EPFO) to promptly settle disputes, particularly when the accused has fulfilled the statutory obligations for which prosecution complaints were filed. This process helps alleviate the challenges associated with prolonged legal proceedings. Through strict adherence to established procedural protocols and fostering positive interactions, EPFO can efficiently utilise Plea Bargain to manage default cases and maintain the credibility of its regulatory responsibilities.

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The Cross-Examination Conundrum: Its Role in EPF Assessment Proceedings

C Ramesh,
SS, RO, Vellore.

Cross-examination, a crucial aspect in legal proceedings, involves questioning a witness the opposing party presents. This process, as defined in Section 138 of the Indian Evidence Act 1872, includes an initial examination, known as examination-in-chief, followed by cross-examination, if necessary, by the opposing party and potentially re-examination if requested by the party who called the witness.

In administrative hearings, especially those with quasi-judicial characteristics, adherence to principles of full, fair, and adequate proceedings is paramount. Adequate notice of the issues at hand is essential, with precise definitions. All involved parties must be thoroughly informed of the evidence presented, enabling them to provide explanations or counterarguments. Certain courts emphasise the necessity for parties to have the chance to cross-examine witnesses and submit evidence, including rebuttal evidence. Ultimately, decisions by the quasi-judicial body must be grounded solely on the presented evidence.

Assessment proceedings under the EPF & MP Act, 1952 stand out from traditional judicial proceedings due to their unique nature. They do not rigidly adhere to the rules of evidence. Assessing Officers, the key players in these proceedings, are not bound by the technical rules of evidence outlined in the Indian Evidence Act. They have the authority to base their decisions on materials that may or may not be admissible in a court of law, allowing for a more flexible application of evidence rules.

Moreover, the quasi-judicial authority, being generalists, lacks familiarity with the Laws of Evidence, resulting in a failure to strictly adhere to these rules during quasi-judicial proceedings. This deficiency in understanding extends to the adjudicating officer, who cannot determine which questions should be permitted or disallowed during cross-examination. Such unfamiliarity with the Rules of Evidence by the adjudicating officer poses a significant risk of miscarriage of justice for the department. Additionally, in situations where there is no examination-in-chief, cross-examination becomes irrelevant. Furthermore, as there is no designated prosecutor to conduct the examination of witnesses, the defence is not provided with an opportunity for cross-examination.

Some legal opinions assert that cross-examination is not a fundamental component of the principles of natural justice. For instance, in *Union of India and another vs Tulsiram Patel and others* [1985 AIR 1416], the Supreme Court of India observed that the process of a fair hearing need not conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of *audi alteram partem* rule in a quasi-judicial or administrative inquiry.

The Calcutta High Court, in the case of *Kishanlal Agarwal vs Collector of Land Customs* [AIR 1967 Cat. 80] observed, “No natural justice requires that there should be a kind of formal cross-examination. Formal cross-examination is procedural justice. It is governed by the Laws of Evidence. It is the creation of courts, which are not a part of natural justice but of legal and statutory justice. It is agreed that natural justice certainly includes any statement of a person before it is accepted against somebody else, that somebody else should have an opportunity to meet it, whether it is by way of interrogation or by way of comment, which does not matter. So long as the party charged has a fair and reasonable opportunity to see, comment, and criticise the evidence, statement or record on which the charge has been made against him, the demands and test of natural justice are satisfied. Cross-examination in that sense is not the technical cross-examination in a Court of law in the Witness Box.”

Legal Precedents and the Imperative of Cross-Examination in EPF Cases

However, there are numerous instances under the EPF Act where the denial of cross-examination is perceived to violate principles of fairness.

For instance, in *Srinivasan Associates Private Limited vs The Regional Provident Fund Commissioner-II* [2019 (3) LLN 516], a Division Bench of the Madras High Court held that principles of natural justice have to be strictly adhered to permit the appellant to cross-examine the Department witness (Enforcement Officer), who had conducted the inspection and drawn the reports based on which the assessment of dues was purported to be done.

In *Pure Pharma Ltd. vs. Regional Provident Fund Commissioner and others* [Writ Petition No.310 of 2022, decided on 16-06-2023], the Madhya Pradesh High Court (Indore Bench), after discussion of the various Supreme Court judgements, held that sub-section (2) provides that the officer conducting the enquiry under subsection (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the code of Civil Procedure in respect of the enforcing the attendance of any person or examining him on oath; requiring the discovery and production of documents, receiving evidence on affidavit etc. and such inquiry shall be deemed to be a judicial inquiry, therefore, either party i.e. employer and employee filed an affidavit under Order 18 Rule 4 of C.P.C. the opposite party shall have right to cross-examine him.

In *Gujarat State Civil Supplies Corporation Ltd. vs Regional P.F. Commissioner & others* [(2000) GLR 398; (1999) II LLJ 844 Guj.], the Gujarat High Court held that an order made in breach of principles of natural justice does not stand for that reason alone and that the breach of principles of natural justice takes place in many forms. The order may not have been passed without affording an opportunity at all. The order may have been passed in violation of the fair procedure necessary for fair adjudication, namely, where the accuser has acted as adjudicator or the opportunity of cross-examination has not been granted.

In *Varhadi That vs Assistant Provident Fund Commissioner, Nagpur*, [(2008) IILLJ34BOM, 2008(1) MHLJ265] the Bombay High (Nagpur Bench) was considering the case the Petitioner sought permission to cross-examine the Enforcement Officers about their report recommending clubbing of two units run by the petitioner. The High Court allowed cross-examination of the Enforcement Officer, observing that by depriving the petitioner of the opportunity of cross-examination, the Commissioner would not be able to come to the right conclusion.

The Bombay High Court (Nagpur Bench), in the case of *Pramod Anandrao Shinde vs Assistant Provident Fund Commissioner* [Writ Petition No.2332 of 2007, decided on 5-9-2007], has *inter alia* observed that the Enforcement Officer, having carried out the inspection of the petitioner-establishment, and having recorded certain observations in his report, his version mentioned in the report is liable to be tested by cross-examination.

In *Prem Motors Pvt Ltd. vs Employees' Provident Fund Organisation and others* [2016(149) FLR 789: 2016 (150) FLR 109: 2017 CLR 73], the Madhya Pradesh High Court held that where the presiding office in the proceedings under Section 7A failed to summon the contractor for the deployment of security personnel and failed to supply document obtained by the enforcement officer and also did not give an opportunity of cross-examination of the enforcement officer, the proceedings are bereft of the principles of natural justice. In *Faze Three Limited vs Employees' Provident Fund Organisation* [Special Civil Application No.9730 of 2013], the Gujarat High Court set aside the order passed by the Regional Provident Fund Commissioner for the reason he accepted the report submitted by the Enforcement Officer without furnishing a copy of it to the employer or affording him an opportunity to cross-examine the Enforcement Officer.

In the case of *Sant Dnyanenshwar Hospital Pvt. Ltd. vs Office of the Regional Provident Fund Commissioner, Pune* [2016 (148) FLR 900: 2016 LLR 202 (Bom. HC)], the Bombay High Court ruled that the Enforcement Officer failed to assess the salary figures accurately. The authority under Section 7-A based its determination on incorrect legal and factual grounds. It extrapolated details from salary figures of the year 2008-2009 to 2010-2011 without proper justification, resulting in erroneous conclusions. Additionally, no opportunity for cross-examination was provided, rendering the determination unsustainable. The court also found the rejection of the review petition, citing lack of new evidence, unsustainable. Consequently, the court nullified the decision, setting it aside and remanding it for further consideration.

In *Leonaras Restaurant vs Assistant Provident Fund Commissioner, Goa* [2015 (6) Mah. LJ 605: 2016 (148) FLR 616: 2016 II CLR 39: 2016 LLR 381/700 (Bom. HC)], where the Regional Provident Fund Commissioner rejected the application of the employer's advocate for cross-examination of the Enforcement Officer, it is held that such an order will not sustain in law for want of adherence to the principles of natural justice. Hence, the matter was remitted for allowing cross-examination directing the deposit of the amount assessed without prejudice to the rights and contentions of the employer.

In *Bhaiya Industries vs Rashmikant Shah* [1984 I LLN 587 (MP. DB)], a Division Bench of the Madhya Pradesh High Court observed, "The Scheme of sub-sections (2) and (3) of Sec.7-A, therefore, clearly provides that the officer conducting an enquiry under Sec.7-A is expected to proceed judicially and enquire into the matter after affording a reasonable opportunity to the employer to represent his case. It, therefore, could not be contemplated that an officer enquiring into the liability under sub-section (2) of Sec.7-A could interrogate the material witness without affording any opportunity to the parties for putting questions in the nature of cross-examination."

In *Jose Mathew, proprietor of M/S. Mother Teresa Cashew Factory vs The EPFO and other* [W.P. No.32586 of 2009], the petitioner was aggrieved by proceedings initiated under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The dispute arose when the Enforcement Officer conducted an inspection based on a complaint by a trade union. The petitioner's main contention was regarding the cross-examination of the Enforcement Officer. The respondent refuted the petitioner's claims, stating that the Enforcement Officer was available for cross-examination on a previous date, but the petitioner had requested an adjournment. After that, the petitioner did not pursue the cross-examination. In this case, the Kerala High Court emphasised the importance of the principles of natural justice, including the right to a fair hearing and the opportunity to confront any official witness with evidence contradicting their conclusions. As the petitioner was not afforded this opportunity, the court set aside the order and directed that the petitioner be given a chance to cross-examine the Enforcement Officer.

The Obligatory Nature of Cross-Examination in Certain Cases

The importance of cross-examination in quasi-judicial proceedings is evident not only in cases concerning the EPF Act but also in various other specific situations.

For instance, in the case of *Andaman Tiber Industries vs Commissioner of Central Excise*, the Supreme Court underscored that denying the assessee the opportunity to cross-examine witnesses whose statements were used to formulate an order constitutes a severe breach of natural justice, rendering the order invalid. The Supreme Court further clarified that the decision to allow cross-examination depends on the specifics of each case and cannot be determined by a rigid formula. If the decision-making authority fails to provide adequate opportunity for cross-examination, it is the responsibility of the aggrieved party to demonstrate the prejudice caused. Mere allegations of procedural irregularities hold no weight. In this case, the assessee argued that he was not permitted to cross-examine specific dealers whose statements were pivotal in the adjudicating authority's decision. Despite the tribunal's dismissal of this plea, the Supreme Court ruled in favour of the assessee upon

appeal. The Supreme Court asserted that denying the right to cross-examination witnesses, whose statements formed the basis of the order, violated principles of natural justice and adversely affected the assessee. The Tribunal's reasoning, which suggested that cross-examination would not have produced new material, was deemed untenable. The Supreme Court emphasised that if the Department's action relied solely on the statement of witnesses unknown to the appellant, the right to cross-examination must be granted.

In *State of Kerala vs K.T.Shaduli Grocery Dealer Etc* [(1977) 2 SCC 777], the Supreme Court asserted that the usual mode recognised by law for providing a fact is by the production of evidence and evidence includes oral evidence of witnesses. The opportunity to prove the correctness or completeness of the report would, therefore, carry with it the right to examine witnesses, which would include equally the right to cross-examine witnesses examined by the Sales Tax Officer.

Conclusion

The principle of due process mandates that every individual is entitled to adequate notice and a chance to present their case and defend their rights. It is typically mandated that hearings are conducted in a valid, fair, and transparent manner. Additionally, due process necessitates that individuals have the opportunity to understand and respond to the claims made by the opposing party. While these are the general principles of due process, many judiciaries of higher understanding require that parties be allowed to cross-examine witnesses who testify against them. Furthermore, due process demands, among other things, that any findings are based on substantial evidence. While it is recognised that cross-examination is not always required for a fair hearing, the reasons for denying this opportunity usually seem less compelling than those in favour of it.

In the adjudication proceedings under the EPF Act, paramount consideration is accorded to the principle of natural justice, encompassing the right to cross-examination. This principle obliges the assessing authority, in the pursuit of justice, to ascertain whether such cross-examination is imperative to prevent any miscarriage of justice or if its allowance would unduly prolong the litigation without substantive benefit. Additionally, cross-examination assumes particular significance in instances where the determination of the case hinges solely on the testimony of individuals whose cross-examination is sought. Nevertheless, in circumstances where alternative evidence exists substantiating the employer's non-compliance and facilitating the assessment of the dues, the denial of cross-examination would not result in any injustice or prejudice to the employer. Furthermore, the employer must substantiate the necessity for cross-examining the Enforcement Officer, and absent such justification, the Assessing Officer should not entertain the request solely on a request.

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The Principles of Natural Justice

Nitin Singh
RPFC-I (Recovery & Legal)
EPF HQ

Natural Justice means justice which is based on common sense and human values. It is something which is intuitively perceived in a given situation. What is meant by the term 'principles of natural justice' is not easy to determine. It is a phrase which is sadly lacking in precision. It has no fixed definition or a tight set of attributes which define it. It is a principle which implicitly forms the substratum of all valid judgments. It has been variously interpreted as the ' Universal justice' or as 'the requirements of substantial justice' also as 'the natural sense of what is right or wrong' and as 'the fair crack of the whip' etc.

Natural justice sets free the administration of justice from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. Also, whenever legal justice fails to achieve its objective, natural justice is called in aid of legal justice.

Principles of natural justice guarantee minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice.

Another very important principle is 'nemo judex in causa sua' or 'nemo debet esse judex in propria causa sua' that is, 'no man shall be a Judge in his own cause' which means that, 'no man ought to be a Judge in his own case, because he cannot act as Judge and at the same time be a party'. The form 'nemo potest esse simul actor et judex', that is, 'no one can be at once suitor and Judge' is also at times used.

From the above two principles A corollary has been deduced and particularly the audi alteram partem rule, that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done'. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. Natural justice is the essence of fair adjudication which is deeply rooted in tradition and conscience. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

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Enhancing Ease of Living: EPFO's Initiatives and Legal Milestones in Service Delivery

Ms. Usha Shode
RPFC-II (Legal)
RO-Mumbai (Bandra)

Keeping in mind the vision of the Hon'ble Prime Minister to bring ease of doing business and render smooth and hassle free service to PF members/pensioners, the Employees' Provident Fund Organisation has taken up several initiatives in the recent past. These initiatives have helped EPFO in improving the quality of service to crores of members by making their transactions with the organization fast, comfortable and seamless. When the country was hit by the pandemic, and people's needs grew from acute to emergent, EPFO rose to the occasion, and its digital services became the highlight of the Covid -response.

One of the best practices in digital innovation launched by Department of Pension and Pensioners Welfare. DOPPW, in collaboration with UIDAI & Meity, has launched face authentication technology for submission of Digital Life Certificate for enhancing "Ease of Living"

The tireless efforts on the part of field offices towards fulfilling the vision of the Prime Minister to deliver services at the doorstep of the beneficiaries.

Over the years, EPFO has taken several measures and reforms for the benefit of its subscribers.

While Nidhi Aapke Nikat is a programme where EPFO stakeholders visit the field offices, the approach now will be to reach out to the stakeholders, thereby increasing accessibility and visibility of the organisation, in all the districts of the country, with regular periodicity.

The scope of this program would be to reach out to all the districts in the country on the same day every month. It also aims at inclusive, cohesive and coherent outreach program with a district as a unit of focus. It will be a broad based participatory awareness and outreach program for the employers and the employees acting as a grievance redressal platform for members and information exchange network. The Nidhi Aapke Nikat 2.0 is conducted on 27th of every month starting from January 2023.

In the last three years EPFO has transitioned from being a paper-based organisation to a paperless organisation. The shift towards online mode of claim filing and settlement has ensured that EPFO has moved significantly towards faceless settlement process.

Through millions of seamless e-interactions in last few years, the organization has saved millions of man-hours spent waiting in unending queues that has more than just improved customer satisfaction and ease of transactions. It has cut time and distance to a critical service in people's most vulnerable moments improving their ease of living.

In this regard following orders/judgements of the various Courts/Tribunals has also helped EPFO secure its dues from the defaulting establishments on priority thereby enabling the EPFO to ensure smooth benefit delivery by way of PF/Pension etc to the PF members:

i. Hon'ble NCLAT in Sikandar Singh Jamual V/s Vinay Talwar (CA (AT) 483/2019) judgement dated 11.03.2022 and Hon'ble Supreme Court in Sunil Kumar Jain v/s Sundresh Bhat (CA 5910 of 2019) decided on 19.4.2022 declared that the dues of Provident Fund are to be paid on priority and are outside the proceedings of Section 53 of IBC.

ii. Hon'ble NCLAT Chennai in the Central Board of Trustees EPF v/s the Liquidator M/s Bunt Solar India Pvt. Ltd. has held that EPF is special Act and prevails over all other Acts and dues which are payable to the employees cannot be treated as part of the assets of the Corporate Debtor.

iii. Hon'ble NCLAT New Delhi in Jet Airways Maintenance Engineering v/s Ashish Chawchharia (RP) (2022,861, NCLAT New Delhi and Civil Appeal No.407 of 2023 declaring that the Provident Fund dues are in the nature of third party dues and statutory dues and non-payment of statutory dues of provident fund is a violation of Section 30(2) (e) of IBC. The same view has been held and continued by the Hon'ble Supreme Court of India in the case of Rainbow Papers 2022.

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Civil Appeal No. 8829 of 2010, Har Narayan Tewari (D) Thr. LRs. v. Cantonment Board, Ramgarh before Hon'ble Supreme Court of India.

Abhishek Bisht
ASO (Legal)
EPF HQ

The legal tussle between Har Narayan Tewari and the Cantonment Board, Ramgarh, has been a protracted one, originating from a title suit filed over three decades ago. The essence of the dispute revolves around the ownership and possession of a 0.30-acre piece of land situated in village Ramgarh within the jurisdiction of the Cantonment Board, Ramgarh.

Case History

Har Narayan Tewari filed Title Suit No. 9/89 seeking a declaration of his title over two plots of land, totaling 0.30 acres. The initial trial court ruled in favor of Tewari, but this decision was overturned by the First Appellate Court on grounds of res judicata, due to an earlier suit (Title Suit No. 8/64) filed by Maharani Lalita Rajya Lakshmi. In that suit, Maharani, the wife of Raja Bahadur Kamakshya Narayan Singh, had claimed ownership over a larger tract of land, including Tewari's disputed plots. The First Appellate Court's decision was subsequently upheld by the High Court, leading to the present appeal before the Supreme Court.

Supreme Court Judgment- the central issues:

- **Res Judicata:**
  - The principle of res judicata prevents the re-litigation of issues that have already been decided between the same parties. The Supreme Court analyzed whether this doctrine applied in the present case.
  - The earlier suit by Maharani did not adjudicate the specific rights of Tewari or the Cantonment Board regarding the disputed 0.30-acre land. Therefore, the Supreme Court held that the First Appellate Court and the High Court erred in applying res judicata.
- **Substantial Question of Law:**
  - The Supreme Court identified a substantial question of law regarding the applicability of res judicata in this case. This justified the second appeal, contrary to the High Court's dismissal on the ground of lack of substantial question of law.
- **Merits of the Case:**
  - The Court examined the merits of Tewari's claim. The evidence included settlement documents from 1942, a subsequent hukumnama (order) confirming the settlement, and rent receipts. These documents were uncontested by the Cantonment Board.
  - The Supreme Court noted that the Cantonment Board's claim was limited to 2.55 acres of land for its facilities, separate from Tewari's 0.30-acre claim. The Board's assertion of adverse possession over the entire 5.38 acres was found unsubstantiated.

The Supreme Court set aside the judgments of the First Appellate Court and the High Court. It ruled in favor of Har Narayan Tewari, affirming his title and possession over the disputed 0.30 acres of land.

Implications of the Judgment

This judgment is significant for several reasons:

- **Clarification of Res Judicata:**

    - The ruling clarifies that res judicata applies only when the issues in both suits are directly and substantially the same. It cannot be invoked in situations where the issues are distinct and unadjudicated in the previous suit.
- **Substantial Question of Law in Appeals:**
    - It underscores the importance of correctly identifying substantial questions of law in second appeals, ensuring that legitimate claims are not dismissed summarily.
- **Rights of Co-Defendants:**
    - The judgment highlights that the rights of co-defendants must be explicitly adjudicated in previous litigation for res judicata to apply between them.

This case serves as a crucial reference point for property disputes involving principles of res judicata and substantial questions of law. It reaffirms the necessity for courts to carefully scrutinize the specific issues and claims involved in previous suits before dismissing current litigation on procedural grounds.

The Har Narayan Tewari case is a testament to the judiciary's role in protecting rightful ownership and possession, and it reinforces the legal doctrines that prevent misuse of procedural technicalities to obstruct justice.

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Legal Provisions (IPC/CPC/CrPC) Relevant to EPF Act: An Overview

C.Ramesh,
SS, RO, Vellore.

The Employees' Provident Funds and Miscellaneous Provisions Act of 1952 (EPF Act) is a comprehensive and self-contained legislative code. However, in the practical implementation and enforcement of the EPF Act, it becomes necessary to refer to and apply provisions from other significant legal frameworks. For instance, the Indian Penal Code (IPC) may be invoked in cases of fraud or embezzlement related to provident fund contributions. The Criminal Procedure Code (CrPC) comes into play for procedures related to the prosecution and trial of offences under Section 14 of the EPF Act. Similarly, the Civil Procedure Code (CPC) is essential for civil proceedings, such as the assessment of dues under Section 7-A of the Act and recovery of dues or resolving disputes of provident fund contributions. By integrating provisions from the IPC, CrPC, and CPC, the authorities can address various legal issues comprehensively.

Indian Penal Code, 1860 (IPC)

Section 21 of IPC enumerates different categories of individuals classified as public servants. According to Section 18-A of the EPF Act, the Presiding Officer of a Tribunal, along with certain other officers (specifically those mentioned in Section 7-A and all Inspectors), are designated as 'public servants' as defined in Section 21 of the IPC.

Section 193 of IPC stipulates that any individual who intentionally provides false evidence at any stage of a judicial proceeding, or fabricates false evidence intended for use at any stage of a judicial proceeding, is subject to punishment. The penalty for such an offence includes imprisonment for up to seven years and a fine. This provision underscores the gravity of perjury by enforcing a significant penalty, highlighting the critical importance of truthful testimony in the judicial process. This is detailed in Section 7-A (2) of the EPF Act, concerning the powers of the authorities under Section 7-A.

Section 196 of IPC penalises anyone who corruptly uses or attempts to use as true any evidence they know to be false. It is typically invoked in scenarios where a person knowingly uses false documents or false electronic evidence in any proceeding, including judicial proceedings and other instances where evidence is formally presented. The prescribed punishment for this offence is the same as for giving or fabricating false evidence, which can include imprisonment for up to seven years and a fine. This is outlined in Section 7-A (2) of the EPF Act regarding the powers of the Section 7A authorities.

Section 228 of IPC protects public servants from intentional insults or interruptions during judicial proceedings, ensuring respect and decorum in EPF hearings. This section criminalises the act of intentionally insulting or causing an interruption to any public servant while they are engaged in any stage of a judicial proceeding. The behaviour must be deliberate and must disrupt the proceedings or show disrespect towards the public servant's role within those proceedings. The punishment for this offence is imprisonment for up to six months, a fine, or both. This provision is detailed in Section 7-A (2) of the EPF Act regarding the powers of the Section 7A authorities.

Sections 405 and 406 of IPC deal with the offence of criminal breach of trust. According to this section, a person is said to commit a criminal breach of trust if they are entrusted with property. Paragraph 32(3) of the EPF Scheme expressly entrusts the employers with the workers' share of EPF contributions deducted from their wages. This is a legal entrustment. If employers do not deposit the deducted provident fund contributions into the designated provident fund accounts, it constitutes a dishonest misappropriation of funds. The punishment for criminal breach of trust can extend to imprisonment for a term which may extend to three years, or with a fine, or with both. Section 405

specifies what constitutes the offence, while Section 406 lays down the punishment for those found guilty of committing it.

Section 409 of IPC specifically deals with criminal breach of trust committed by certain categories of individuals who hold positions of trust, including public servants, bankers, merchants, factors (agents handling goods for sale or consignment), brokers, attorneys and agents. Section 405 applies generally to anyone who is entrusted with money whereas Section 409 specifically targets certain individuals in positions of significant trust and responsibility such as public servants. The punishment for criminal breach of trust as defined in Section 405 is imprisonment of either description for a term that may extend to three years, with a fine, or with both. However, the punishment for criminal breach of trust by public servants, bankers, merchants, and agents is more severe. It prescribes imprisonment for life, or imprisonment of either description for a term that may extend to ten years, and also a fine. The difference in the severity of punishment under Section 409 is due to the higher degree of trust and responsibility placed in the hands of public servants and professionals like bankers and agents.

Code of Criminal Procedure, 1973 (CrPC)

Section 98 of Cr. P.C provides the authority to a magistrate to issue a search warrant under certain conditions. This provision is invoked when there is reasonable cause to believe that someone is wrongfully confined, or there are objects, documents, or other evidence essential for an investigation or judicial proceeding that are concealed in a location. Section 13 of the EPF Act empowers Inspectors to search premises and seize documents or evidence related to provident fund violations. This is akin to the powers granted under Section 98 of the CrPC, where a magistrate issues a search warrant for specific purposes. While Section 98 CrPC involves a magistrate's authority to issue search warrants, Section 13 of the EPF Act involves the administrative authority of Inspectors.

Section 110 of Cr. P.C deals with the preventive measures that authorities can take against habitual offenders to ensure the safety and peace of the community. This section empowers the Executive Magistrate to require individuals who are found to be habitual offenders or are likely to commit offences, to furnish security for good behaviour. An Executive Magistrate, upon receiving credible information and being satisfied that the individual is a habitual offender, can order the person to show cause why they should not be required to provide security for good behaviour. The order to provide security can include a bond with or without sureties for a period not exceeding three years. Chronic defaulters of EPF contributions can be considered within this category, as their repeated non-compliance threatens the financial security of employees. Although the EPF Act does not directly reference this provision, applying the principles of Section 110 CrPC to such defaulters can help ensure compliance and protect employees' interests.

Section 195 of Cr. P.C addresses the prosecution for contempt of the lawful authority of public servants, offences against public justice, and offences relating to documents given in evidence. This section aims to ensure that legal proceedings are not undermined by fraudulent or deceitful actions and that the authority of public servants is respected. This provision is incorporated in Section 7-J (2) of the EPF Act to safeguard the integrity of legal proceedings of the Central Government Industrial Tribunal.

Section 197 of Cr. P.C has been enacted to provide certain protections to public servants, particularly those occupying judicial and quasi-judicial positions. This section mandates that prior sanction is required before prosecuting a public servant for actions performed in the course of their official duties No court shall take cognizance of an offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of their official duties, except with the previous sanction of the appropriate government. Although the EPF Act, does not explicitly reference this section, the principles of requiring sanction before prosecuting officials can be significant in the context of safeguarding EPF officials performing their statutory duties.

Section 468 of Cr. P.C sets specific limitation periods for taking cognizance of various offences based on the severity of the punishment prescribed. It specifies the maximum period within which a court can take cognizance of certain offences. The limitation period for taking cognizance of an

offence is determined by the maximum punishment prescribed for that offence. The purpose of this provision is to ensure timely prosecution and to prevent undue delay in the administration of justice. While the EPF Act does not directly reference this provision, the underlying principles of timely prosecution under Section 14 are relevant for the effective enforcement of the EPF Act.

Section 472 of Cr. P.C. addresses the issue of limitation periods for "*continuing offences*." It specifies that in the case of a continuing offence, the period of limitation shall begin from the moment when the offence ceases. A continuing offence extends over a period of time and persists until a certain event occurs to terminate it. The non-payment of EPF dues is considered a continuing offence within the meaning of Section 472 CrPC. In cases of non-payment of EPF dues, the limitation period for initiating legal action would commence when the employer finally pays the dues or when the breach is rectified. This ensures that employers cannot escape liability simply by allowing the limitation period to expire while the non-compliance persists.

Section 482 of Cr. P.C is a significant provision that grants High Courts inherent powers to make such orders as may be necessary (i) to give effect to any order under this Code, (ii)to prevent abuse of the process of any Court, or (iii)to secure the ends of justice. While there is no direct mention of Section 482 CrPC in the EPF Act, employers or accused individuals often use this provision to seek relief from prosecution cases filed against them under the EPF Act. If a prosecution is initiated against a director or senior official of a company for non-payment of EPF dues, they may use Section 482 CrPC to argue that they were not involved in the company's operations at the time the dues were not paid. This provision can be invoked to prevent misuse of legal processes where it is evident that the accused is being wrongfully targeted despite not having any responsibility for the offence.

Code of Civil Procedure, 1908 (CPC)

Section 30 of CPC empowers courts to manage the pre-trial phase of litigation effectively by ordering various measures to ensure that all relevant facts and documents are presented before the court. Section 7-A of the EPF Act confers quasi-judicial powers on the authorities appointed under the Act, enabling them to conduct inquiries and make decisions regarding the applicability of the Act and determination of dues. The authorities under Section 7-A are vested with the powers of a civil court under the CPC for purposes such as summoning and enforcing the attendance of any person, requiring the discovery and production of documents, and receiving evidence on affidavits. Although this section is not directly mentioned in the EPF Act, its principles can be inferred through the term "powers of a civil court" in Section 7-A of the Act. This enables authorities under the EPF Act to manage inquiries effectively, ensuring that all necessary evidence is considered for a just outcome.

Section 32 of CPC provides courts with various measures to enforce compliance with their orders, including arrest, detention, fines up to Rs.5,000/- and attachment of property. Although this section is not directly mentioned in the EPF Act, its principles can be inferred through the term "powers of a civil court" in Section 7-A of the Act. This enables authorities under the EPF Act to effectively manage and enforce compliance during inquiries, ensuring that all necessary evidence is obtained and that parties adhere to legal obligations.

Section 60 of CPC outlines the types of properties that can be attached and sold in the execution of a decree. This section guides the attachment and sale of a judgment debtor's property to satisfy a court decree. Certain properties are exempt from attachment and sale, such as cooking vessels, mangal sutra, tools of artisans, items necessary for the livelihood of the defaulter and so on. Although this section is not directly mentioned in the EPF Act, its principles are relevant and can guide the Recovery Officer in attaching and selling the movable and immovable properties of defaulters.

The integration of provisions from the IPC, CrPC, and CPC into the enforcement mechanisms of the EPF Act underscores the robust legal framework supporting the Act. These intersections not only enhance the efficacy of EPF proceedings but also ensure that the interests of employees are protected through stringent legal measures. Understanding these provisions is crucial for all stakeholders involved in the administration and compliance of the EPF Act, as they provide a comprehensive legal toolkit to address various challenges that may arise in its enforcement.

Postscript:

On July 1, 2024, the Bharatiya Nyaya Sanhita (BNS) and the Bharatiya Nagrik Suraksha Sanhita (BNSS) replaced the Indian Penal Code (IPC) and the Criminal Procedure Code (CrPC), respectively. Below is a comparison table of the IPC/CrPC provisions and their corresponding sections under the BNS and BNSS.

IPC	BNS	Offence/Description
405	316(1)	Criminal breach of Trust
406	316(2)	Punishment
409	316(3)(4)(5)	Criminal Breach of Trust by Public Servant etc.
21	2(28)	Definition of Public Servant
193	229	Punishment for False Evidence
196	233	Using Evidence Known to be False
228	267	Intentional insult or interruption to a public servant sitting in a judicial proceeding.

Cr. P.C	BNSS	Offence/Description
110	129	Security for good behaviour from habitual offenders.
195	215	Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.
197	218	Prosecution of Judges and public servants
468	516	Bar to taking cognizance after lapse of the period of limitation.
472	520	Continuing offence
482	530	Saving of inherent powers of the High Court

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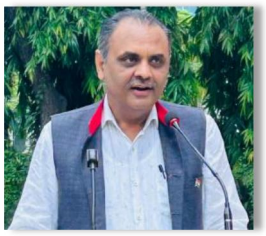
My Journey in EPFO



S. K. Aggarwal, ACC (HQ)/Director PDNASS

I began my career with the Employees' Provident Fund Organisation (EPFO) as an Assistant Provident Fund Commissioner (APFC) on December 17, 1990, at the Regional Office in Kanpur. At that time, the EPFO had a Central Office, 16 Regional Offices, 47 Sub-Regional Offices, 4 Service Centres and 161 Provident Fund Inspectorates spread across India. Currently, there are 21 Zonal offices, 139 Regional Offices and 113 District offices.

Key Performance Indicators (Year: 1990-91):

1. **Covered Establishments:** 2,933 exempted and 2,04,053 unexempted establishments, totalling 2,06,986.
2. **Subscribers:** 43.77 lakh in exempted and 113.30 lakh in unexempted, making a total of 157.07 lakh subscribers.
3. **Contributions:** During the year, ₹2,358.82 crore was collected from exempted establishments and ₹1,797.57 crore from unexempted, totalling ₹4,156.39 crore. The accumulated corpus stood at ₹29,476.85 crore, with investments totalling ₹27,525.59 crore.

Claims and Settlements:

1. **Provident Fund (PF) Claims:** 6.98 lakh PF claims were settled during the year, amounting to ₹632.24 crore. The cumulative settlement was 103.48 lakh claims, totalling ₹4,295.6 crore.
2. **Family Pension Fund (FPF) Claims:** 6.44 lakh claims were settled for ₹4,784.62 lakh, with a cumulative settlement of 53.13 lakh claims amounting to ₹18,258.73 lakh.
3. **Employees' Deposit Linked Insurance (EDLI) Claims:** 17,033 EDLI claims were settled, totalling ₹1,161.26 lakh. The cumulative EDLI claims settlement was ₹11,487.98 lakh.
4. **Advances:** 3.82 lakh advances were sanctioned, amounting to ₹276.09 crore, with a cumulative figure of ₹1,387.1 crore.

During this period, five industries (Electrical, Mechanical or General Engineering Products, Textile, Beedi, Trading & Commercial, and Road Motor Transport) accounted for 35.3% of the covered establishments and 47.24% of the total subscribers. Section 1(4) of the Act, allowing voluntary coverage, became effective on August 1, 1988, and 11,174 establishments were covered under this section.

The contribution rate was 10% for 98 industries employing 50 or more individuals, and 8.33% for the rest. The EPF constituted 5.96% of the national domestic savings, and the EPF interest rate was 12%. Investments were primarily made in Special Deposit Schemes (up to 85%) and Government securities (minimum 15%).

Before November 1, 1990, employees needed to meet specific criteria to become EPF members. However, after an amendment to Paragraph 26, membership became mandatory, from the date of

joining subject to wage ceiling and the salary limit for PF, FPF, and EDLI membership increased from ₹2,500 to ₹3,500. The EDLI benefit was also revised, ranging from ₹15,000 to ₹25,000 w.e.f. 1st November 1990. Additionally, Sections 8B to 8G of the Act were introduced in the year 1990.

Manpower in EPFO:

- Group A: Sanctioned strength of 378, with 303 in position.
- Group B: Sanctioned strength of 1,565, with 1,386 in position.
- Group C: Sanctioned strength of 12,257, with 11,438 in position.
- Group D: Sanctioned strength of 2,328, with 2,010 in position.
- Total sanctioned strength: 16,528, with 15,137 in position.

Training Institutes

Until the year 1990, there were no formal training arrangements for the large EPFO workforce. New recruits were deployed directly without training. This changed on October 22, 1990, with the inauguration of the National Institute for Training & Research in Social Security (NITRSS), which was later renamed NATRSS and is now known as PDNASS. Four Zonal training institutes were also established in Bombay (Mumbai), Madras (Chennai), Calcutta (Kolkata), and Faridabad.

Grievance Handling

Subscriber grievances were handled centrally at the Central Office on Fridays, with Public Relations Officers stationed in every office for resolving grievances. In the year 1990-91, 80,271 grievances were received, mainly related to delays in claim settlements, advance sanctions, account transfers, and issuance of annual account statements. As of March 31, 1991, 1,17,33,620 annual account statements were pending, with 68,03,371 statements pending for more than a year. To address this, computerization was considered a solution, and in the year 1983, the Computer Maintenance Corporation was engaged as a consultant. However, it took six years to install an in-house computer system.

By the financial year 1989-90, a computer system with two Super PC/AT-386 units and eight terminals each was installed in the Bombay Regional Office, enabling the issuance of 47,62,439 account statements. By the year 1992, all 16 Regional Offices were connected to the EPFO's computer network. The Computerised Payment Accounting System (CPAS) and Computerised Accounts Monthly Preparing System (CAMPS) were introduced in the financial year 1993-94 for cash book preparation and monthly balance interest calculations, respectively.

Computerisation in EPFO

In the financial year 1996-97, the EPFO adopted software for grievance monitoring (PGHS) and receipt processing (CRAS), along with Computerised EPS (CEPS) software for processing EPS claims. Electronic Mail (email) was introduced via NICNET in the financial year 1997-98, connecting 45 EPFO offices to the internet. Recruitment rules for Data Entry Operators, Computer Supervisors, and Programmers were approved, and the first EPF Appellate Tribunal (EPFAT) was constituted on July 1, 1997, as per Section 7D of the Act.

The 1990 decade marked a turning point for the EPFO as computerized account statements became accurate and up to date. The digitization reduced the need for physical visits to EPFO offices and improved transparency. Employers could file contribution data digitally, which streamlined account updates and minimized errors. The Electronic Data Processing (EDP) section ensured data security and accessibility, leading to decentralized data management and improved efficiency. However, converting paper-based records to digital formats was challenging, requiring significant resources for data validation and correction.

By the financial year 2000-01, computerized verification revealed that nearly 48% of establishments were non-compliant for over three years, and 38% of subscriber details were incomplete. This led to the launch of the 'Compliance 2001 programme', which consolidated enforcement functions at the Circle Officer level, set targets for compliance, and introduced new software for monitoring performance. As a result, 42,897 establishments were brought into compliance, and 40,92,996 annual accounts were issued. The assessments increased fivefold, and recovery tripled.

The EPFO also developed an Annual Business Plan (ABP) to set targets for key result areas, enabling monthly performance reviews. The Executive Committee of the CBT (EPF) established a Multi-Disciplinary Technical Committee (MDTC) to prepare a modernization plan for the EPFO, leading to the appointment of M/s Siemens Information System Limited (SISI) as a consultant for the "Re-inventing EPF India" project. This project aimed to introduce a social security smart card, allowing members to access their account balance and file claims at any EPFO office nationwide.

EPFO Website & National Social Security Number

The EPFO website was launched on November 7, 2001, offering grievance registration and other services. In May 2002, a proposal was approved to provide computer systems to officers up to the APFC level. The Computerised Claim Processing System (CCPS) was developed to handle claim settlements more efficiently, and over 8,000 staff and officers were trained in basic computer courses as part of the "Re-inventing EPF India" project. The National Social Security Number (NSSN) was inaugurated on February 25, 2003, as part of the Golden Jubilee celebration of the EPFO.

The NSSN project involved collecting and capturing member data, including live photographs and biometric data, and converting legacy data into electronic formats. Six pilot offices were selected for implementation, but the project faced delays. Despite efforts to address these issues, the contract with SISL was eventually terminated, and the project was restructured with the National Informatics Centre (NIC) providing support. The revised plan focused on decentralized implementation, with a two-phase approach to client services and database consolidation.

Targeted facilities for improving Ease of doing Business & Ease of Living

Between the year 2000 and 2010, EPFO's coverage expanded due to India's economic growth and the inclusion of new sectors like IT and telecommunications. The popularity of EPS-95 and increased benefits under the EDLI scheme also contributed to this growth. The introduction of provisions for International Workers in 2008 and social security agreements with Belgium and Germany further expanded EPFO's reach.

Over the years, EPFO has evolved to accommodate the growing needs of its members, requiring the adoption of more sophisticated financial management practices to safeguard and optimize their contributions. This led to an exploration of high-yielding investments, such as equities and corporate bonds. The increasing membership and operational complexity also highlighted the need for improved service delivery. As a result, Bhavishya Nidhi Adalats were held monthly to reach members far from EPFO offices, and online grievances were addressed through platforms like CPGRAMS and EPFIGMS. In the year 2007, the District Information Access Module (DIAM) was launched in all district offices to serve as local service centres, and a "Know Your Claim Status" feature was added to the EPFO website.

Although the ambitious NSSN project did not succeed, it provided valuable lessons that informed the more successful implementation of the Universal Account Number (UAN) system in the year 2014, which addressed many of the same issues. By the year 2011, NEFT was integrated into the application for payment of benefits, allowing SMS updates to members at various stages of claim processing. The Electronic Challan cum Return (ECR) system, introduced in April 2012, revolutionized the submission of returns by linking them directly to bank payments and automatically crediting individual member accounts on a monthly basis.

Further improvements followed, such as the **launch of an Establishment Search Facility on the EPFO website in the year 2012**, enabling employers to verify payments and employee details online.

This digital transformation led to the introduction of various dashboards displaying the performance of EPFO offices, and a cadre restructuring was approved in the year 2013, expanding the organization's workforce significantly.

The ECR system also enabled the automatic crediting of annual interest to members' accounts, and by the financial year 2013-14, online transfer of claims was made possible, reducing the time needed to transfer PF accumulations between accounts. The wage ceiling for contributions was increased in September 2014, leading to significant amendments to the EPS-95 scheme, including the introduction of a minimum pension and the elimination of the option to contribute on salaries exceeding the wage ceiling.

EPFO continued to innovate, **launching the Online Registration of Establishments (OLRE) portal in the year 2014 and integrating with the Ministry of Labour & Employment's Shram Suvidha Portal** for transparent inspections and timely reporting. The UAN program, also introduced in the year 2014, became a pivotal tool for managing members' multiple IDs and simplifying service delivery through the integration of Aadhaar, PAN, and bank accounts.

In response to the COVID-19 pandemic, EPFO played a crucial role in providing financial relief to affected workers by allowing non-refundable advances from provident fund accounts and accelerating claim settlements. The pandemic underscored the importance of digital services, leading to the introduction of a multi-location claim settlement facility and other online initiatives to minimize physical interactions.

Post-pandemic, EPFO has continued to evolve, focusing on further digitization, transparency, and expanding social security coverage. Recent initiatives include the implementation of facial authentication for pensioners, the introduction of E-office across India, and the launch of various digital tools and portals to enhance service delivery and member engagement.

The decade from 2010 to 2020 marked a significant transformation for EPFO, characterized by a digital revolution that reshaped its operations, interactions with members, and service delivery. The introduction of UAN, expansion of online services, and Aadhaar integration were key milestones in modernizing EPFO's processes and improving efficiency.

Recently, Legal Framework Document released by EPFO aims at reducing the litigation, in line with the National Litigation Policy and provides for Standard Operating Procedures (SOP) for defending matters before various Courts and other Legal fora. A compendium of 50 Landmark Judgments of EPF Act was released to foster a deeper understanding of EPF legislation and Adyatan, EPFO Legal Monthly Bulletin, was launched from the Month of September 2023 to serve as a trusted source of updates, trends, and expert analysis in the realm of EPFO legal landscape. PDNASS has also taken initiative to provide training on LIMBS portal and IBC (Insolvency and Banking Code) Provisions. These initiatives have resulted in decrease in number of Court cases and Contempt cases.

The organization also saw major recruitment of SSAs, EO/AOs and APFCs in last 5 years; the induction training and examination for 1794 SSAs were completed by December 2023 and induction training of 2674 SSAs was started in July 2024 by PDNASS. Additionally, MoU were signed with National Law University Gandhinagar (Gujarat) for conduct of induction training of 222 Enforcement Officer and Tamil Nadu National Law University (Tiruchirappalli) for training of 180 Enforcement Officers. The trainings at PDNASS are being conducted with latest pedagogy & technology to enhance Domain, Functional and Behavioural competencies of the officers.

To guide the staff & Officers in their capacity building journey, PDNASS promoted **iGOT Karmayogi platform** in mission mode, leading to registration of more than 12,600 staffs with course enrolments more than 2 lakhs and EPFO has continuously featured among top 10 Hall of fame of iGOT Karmayogi platform for more than 10 months — out of 3803 MDOs. Number of courses per employee is highest among all MDOs and EPFO is ranked second among medium level MDOs with 10,000 – 50,000 employees. Recently, PDNASS launched its First Course on iGOT platform – Recovery Manual, which has been enrolled by around 2000 individuals and it has started developing three new iGOT courses i.e., Compliance Manual, Audit Manual and Balance Sheet, which will assist

around 15,000 staffs& officers to deliver services more effectively and enhance their execution capabilities.

On Good Governance Day i.e., 25th December 2023, PDNASS took an initiative to start the lecture series, "Re-imagining governance discourse with disruptors" and every month one keynote speaker delivers a lecture which are attended by hundreds of staff and officers virtually. The Speaker of the Lecture series includes Chairman Capacity Building Commission, Chairman PFRDA, Director GNLU, Chairman IndusInd Bank Ltd, Former Chairperson TRAI, Secretary Labour and Employment, Executive Director World Bank & former CEO NITI Ayog, and Member Economic Advisory Council to the Hon'ble PM.

In the year 2022-23, on an average day, EPFO received ₹ 1,094.83 Crore as contribution, disbursed ₹ 559.45 Core to beneficiaries, registers 1038 establishments and enrolled 50,041 members, settled 1,66,477 claims, disbursed 30,479 pensions, received 6,362 grievances, and disposed 6,191 and attended 9,099 calls per days.

This is huge increase in volumes and scale of operations, when compared with data in the year 1990 where the contributions received in an entire year is comparable to contribution received in present time one day period. As India's economy grows and diversifies, EPFO's role in ensuring social security for all workers will become even more critical, requiring continuous innovation and reform to meet the challenges of a rapidly increasing workforce. EPFO has the capacity to play leading role among global institutions providing social security and this has been possible through the dint of hard work of the officers & staffs of the EPFO.

As I prepare to disengage from my official duties in EPFO I recall my long association with EPFO with deep sense of gratitude and pride. I am very sure that EPFO will continue to scale greater heights and play greater role for extending social security services. I extend my heartfelt gratitude and best wishes to all the officers & staffs of the EPFO. I will miss working at EPFO but will dearly cherish the innumerable memories that I have accumulated through interactions with brilliant staff and officers at the EPFO.

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Importance of Preparing Brief history and Para wise Comments

Ganesh Kumar,
SSSA. RO, Ambattur

Disclaimer:

The purpose of this article is to highlight the importance of Brief History and Para wise comments (BHPWC) and this is not a set of exhaustive guidelines for preparing the same in any way. The tips and ideas are presented here with the intention to provide additional skills to those handling legal cases.

How important is BHPWC

Once a case is filed and the writ petition or the plaint is received in the office, the same will be sent to the concerned section for preparation of BHPWC. The preparation of BHPWC is not only the first step, but also lays a foundation for the case.

The flow of case from filing to disposal is structured in such a way that initially both the parties are given an opportunity to put forth the facts in support of their contentions. Only then the advocates can conduct the case in further stages of the case.

Thus, the importance of BHPWC being prepared based on the material facts is crucial based on which the advocate can conduct the case in further stages effectively, by presenting the case accordingly, before a legal forum.

Thus, to sum up, it can be understood that the case is conducted only on facts and arguments and hence preparing BHPWC incorporating the material facts is important for conducting the case.

Background work of BHPWC

Once the plaint or the affidavit of the petitioner is received, the same should be read carefully. Identify the key contentions, averments put forth, material facts mentioned, issues framed and the relief sought. Then, the relevant information / records pertaining to the case should be collected for preparing defence. Note any factual inaccuracies or legal inconsistencies, for which preliminary objection can be made. The term "material facts" refers to the facts which are substantiated by the relevant records and only those facts can be furnished in the reply. Hence, collection of records relevant to the case is vital.

Preparing Brief History

The history should be narrated clearly and chronologically. The events should be described in proper sequence duly incorporating the key facts and circumstances. Include dates, times, and locations to establish a clear timeline. The material facts should be stated in a concise form with precision and certainty. There should be no obscurity, vagueness or ambiguity of any sort. Brevity enhances clarity, but the same should not be at the cost of missing out on important facts. In case, if it is felt that incorporating all material facts are essential in enhancing the position in the case, the length of the brief history should not be a case for concern.

Tips:

1. Present events in a clear sequential manner.
2. Use time based markers to guide the narrative.
3. Avoid unnecessary details.
4. Focus on the key events that directly contribute to the case.
5. Present information impartially avoiding bias or emotional language.

6. Use neutral language and avoid making assumptions.

7. Back up the narrative with supporting documents.

8. Ensure that each event you describe is directly relevant to the case.

9. Avoid including information that is not essential to understanding the dispute.

10. Use plain English language.

11. Summarise the key events and their significance in leading to the case.

By following these tips, you can effectively narrate the history of events leading to a case, providing a clear and compelling foundation for the legal arguments.

Preparing Parawise comments:

Para-wise comments are a crucial tool in legal proceedings, providing a structured and comprehensive response to a legal document.

Key benefits of para wise comments:

* **Clarity and Organisation :** Para-wise comments ensure that each allegation or averment is addressed individually, promoting clarity and organization.

* **Efficiency** : By focusing on specific points, para-wise comments can help streamline the response process and avoid unnecessary repetition.

* **Persuasiveness:** Well-crafted para-wise comments can be highly persuasive, as they allow to present the arguments in a clear, concise and compelling manner.

* **Evidence-based** : Para-wise comments provide an opportunity to support the contentions with specific evidence thereby strengthening the case.

* **Legal Compliance** : In legal proceedings, para-wise comments are required to ensure that all relevant issues are addressed and that the response is compliant with applicable laws and regulations.

In summary, para-wise comments are an essential tool for effectively responding to legal documents. By following a structured approach and providing clear, concise and evidence based responses, the chances of a favourable outcome increases.

Tips:

1. A simple language is enough for drafting and the legal jargon is not required.

2. The comments should be prepared for all the paragraphs without any omission.

3. The reply should be clear and concise. When a fact is denied, it must not be done evasively rather it should be denied specifically. Avoid general denials or vague statements. Be specific in the reply and address the exact allegation made. If the allegation in the para is not denied specifically, it will be presumed to be admitted.

4. Support the replies with relevant records.

5. The arguments is to be submitted fairly and avoid emotional language.

6. Unnecessary facts which do not reflect upon the rights and liabilities of the parties or the controversies involved in the case need not be stated in the comments/reply.

7. Brevity indicates clarity and therefore detailed facts mentioned in the representation of the applicant may not always be necessary to be quoted. After proper marshalling of facts, only the relevant facts necessary for deciding the controversy involved should be stated.

8. Writing lengthy sentences in comments/reply should normally be avoided as the same may lead to mistakes and ambiguity.

9. Avoid repetitions.

10. Avoid using offending and harsh words.

11. Comments in reply must not be ambiguous, vague, non-speaking and cryptic. But the same should also not be unnecessarily lengthy.

12. Admission of the facts and the case of the applicant should be avoided in the comments/reply as far as possible. Admission of any fact or case of the applicant absolves him of his burden to prove that fact. However, a fact emanating from any unquestionable or authentic record should normally not be denied and in suitable cases, the same may be admitted in reply/comments.

13. The use of "if", "but" and "that" should be, as far as possible, avoided. Such words tend to take away the "certainty" and can cause ambiguity.

14. Things should be mentioned by their correct names and the description of such things should be adhered to throughout.

Finalising BHPWC

1. Re-check and compare with the relevant records and if required make necessary changes before finalizing.

2. Annexures, if necessary, should be attached with the comments/reply and the same should be mentioned in the concerned paragraph of the comments/reply.

Case laws :

1. *In Ashwani Kumar Singh v. U.P. Public Service Commission; (2003) 11 SCC 584, it was held:-*

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define.

Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

Thus, collecting and presenting the facts of the case clearly helps in defending the case accordingly, if the opposite party cites a judgement contending to be a identical case, by drawing dissimilarities with the case referred.

2. The Supreme Court in ***Thangam And Anr. vs Navamani Ammal*** (2024 JC(SC) 3893) addressed the implications of failing to provide a para-wise reply to the plaint, underlining the importance of specific Para-Wise Denial in written statements under Order VIII Rules 3 and 5 of the Civil Procedure Code (CPC).

The Hon'ble Supreme Court observed the following:

"In the absence of para-wise reply to the plaint, it becomes a roving inquiry for the Court to find out as to which line in some paragraph in the plaint is either admitted or denied in the written statement filed, as there is no specific admission or denial with reference to the allegation in different paras."

"Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant."

The Hon'ble Supreme Court's decision underscores the critical importance of providing a detailed, para-wise reply in written statements to prevent the risk of admissions by default. This ruling is a crucial reminder for defendants to meticulously address each allegation in a plaint to safeguard their legal interests.

3. One has to deny the averment of the plaint/petition which are incorrect, perverse or false. In case, averment contained in any para of the plaint are not denied specifically, it is presumed to have been admitted by the other party by virtue of the provisions of Order 8, Rule 5 of the Code of Civil Procedure. It must be borne in mind that the denial has to be specific and not evasive. (Order 8, Rule 3 & 4 CPC) [*1986 Rajdhani Law Reporter 213; AIR 1964 Patna 348 (DB), AIR 1962 MP 348 (DB); Dalvir Singh Dhilowal v. Kanwaljit Singh 2002 (1) Civil LJ 245 (P&H); Badat & Co v. East India Trading Co. AIR 1964 SC 538*]. However, general allegation in the plaint cannot be said to be admitted because of general denial in written statement. **[Union v. A. Pandurang, AIR 1962 SC 630.]**

4. If the plaint has raised a point/issue which is otherwise not admitted by the opposite party in the correspondence exchanged, it is generally advisable to deny such point/issue and let the onus to prove that point be upon the complainant. In reply, one has to submit the facts which are in the nature of defence and to be presented in a concise manner. **[*Syed Dastagir v. T.R. Gopalakrishnan Setty 1999 (6) SCC 337*.]**

5. The reply to each of the paras of the plaint be drafted and given in such a manner that no para of the plaint is left unattended. The pleadings are foundations of a case. **[Vinod Kumar v. Surjit Kumar, AIR 1987 SC 2179.]**

6. It may be noted that if any of the important points is omitted from being given in the reply, it would be suicidal as there is a limited provision for amendment of pleadings as provided in Order 6, Rule 17 CPC, and also the same cannot be raised in the Affidavit-in-Evidence at the time of leading of evidence. Because if any point has not been pleaded in the pleadings, no evidence could be led on that point. General rule is that no pleadings, no evidence. **[*Mrs. Om Prabha Jain v. Abnash Chand Jain, AIR 1968 SC 1083; 1968 (3) SCR 111*.]**

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Understanding the Difference Between *Mandatory* and *Directory* Provisions in Law

C. Ramesh,
Section Supervisor, RO, Vellore

1. Introduction

In legal practice, interpreting statutory provisions is crucial for determining how laws are applied, orders enforced, and rights safeguarded. A pivotal aspect of this interpretation lies in distinguishing between *mandatory* and *directory* provisions—a distinction significantly influencing the flexibility, compliance, and enforceability of legal statutes or documents.

Mandatory provisions impose strict obligations, and failure to adhere to them typically renders the corresponding legal action or transaction void. In contrast, directory provisions, though important, provide a degree of discretion, acting more as guidelines where non-compliance may not nullify an action but could still carry legal consequences.

Grasping the difference between these two types of provisions is far from a mere theoretical pursuit; it is a vital, practical skill. This article will explore their key distinctions, the interpretive strategies employed in analysing them, and their real-world ramifications. It aims to foster a more comprehensive understanding of these critical legal concepts.

Suppose a statute prescribes that legal filings in a court must be submitted by a specific date, such as within 30 days of receiving a summons. If the statute uses language like "must" or "shall," indicating that failure to submit within this timeframe will result in the case being dismissed, this is a *mandatory provision*.

In contrast, imagine that the same statute requires the document to be formatted in a particular way—perhaps specifying that it should be double-spaced or include a particular heading. While this directive may be necessary for procedural clarity and efficiency, it is unlikely to be regarded as essential to the validity of the filing. If the statute says these formatting guidelines "should" be followed, but there is no express consequence for failure to comply, this would be treated as a *directory provision*. Although failure to meet this requirement could result in minor penalties, such as an order to refile the document rectifying the deficiency, it does not invalidate the document itself or disrupt the overall legal action.

2. Key Differences between Mandatory and Directory Provisions

The difference between the mandatory and directory provisions can be classified on the following basis:

(a) Nature of Compliance:

Mandatory provisions require strict, absolute adherence. Failure to comply usually results in the action or contract being voided or invalid. These provisions emphasise the importance of procedural correctness and often uphold core legal principles that must not be compromised.

Directory provisions, on the other hand, encourage compliance but allow for some degree of flexibility. Non-compliance does not typically invalidate the action; depending on the situation and context, it may have minor legal repercussions. For instance, if a directory provision states a timeline as “advisory” rather than “compulsory,” a delay might still be accepted in a legal process.

(b) Legal Consequences of Non-Compliance:

Non-compliance with a mandatory provision often leads to severe legal consequences, such as dismissal of claims, nullification of contracts, or procedural penalties. For example, failure to meet a mandatory filing deadline may bar a litigant from pursuing a claim, regardless of merit.

With directory provisions, however, non-compliance may be considered non-critical, and courts can choose to overlook such omissions if they do not substantially affect the case or the legal rights of the parties involved. This discretionary approach allows judges to avoid overly rigid enforcement of procedural rules.

(c) Language Used in Provisions:

The language within legal provisions often provides clues about their nature. Terms like "*shall*," "*must*," and "*is required to*" frequently signal a mandatory provision. In contrast, words like "*may*," "*should*," or "*suggests*" are indicative of a directory provision, suggesting an action or requirement but not enforcing it as strictly.

(d) Sentence Structure and Language:

The structure and phrasing of a provision also significantly influence whether it is interpreted as mandatory or directory. When a provision begins with a definitive restriction, such as "*No appeal shall lie*…" or "*The party shall not*…," it often signals a binding obligation. Such language conveys finality and imposes a clear restriction, making it a mandatory provision. Conversely, a more permissive sentence structure, lacking definitive prohibitions, may indicate that the provision is a directory, suggesting compliance is advisable but not strictly required.

(e) Legislative Intent: Courts often examine the legislative intent behind a statute to assess whether a provision is mandatory or directory. This involves analysing the purpose of the provision and whether strict compliance aligns with the statute's overarching goals. For instance, courts may treat it as mandatory if the purpose is to safeguard public rights or procedural integrity. In cases where the goal is to streamline administrative processes without compromising core rights, it may be treated as a directory.

(f) *Impact on the Rights of Parties Involved*: Another test is to determine whether non-compliance infringes upon the rights of involved parties. If failing to adhere to a provision compromises one party's legal rights, courts might view it as mandatory. Conversely, if the provision serves more as a procedural guideline, not directly affecting substantive rights, it may be deemed a directory.

3. Examples from the EPF Act/Schemes

Examples of Mandatory Provisions

An example of a mandatory provision is seen in clause (5) of Section 1 of the EPF Act, which reads, "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." The use of "*shall*" indicates a binding obligation, typical of mandatory provisions requiring strict adherence. Here, even if an establishment's workforce drops below the threshold, it remains subject to the Act. This structure ensures regulatory consistency, preventing establishments from evading compliance by altering employee numbers, and exemplifies how mandatory provisions uphold legislative intent without flexibility.

Another example of a mandatory provision is in Paragraph 31 of the EPF Scheme: "the employer shall not be entitled to deduct the employer's contribution from the wage of a member or otherwise to recover it from him." The use of "*shall not*" makes this a binding rule, prohibiting employers from passing their contribution responsibilities onto employees. This provision strictly enforces employee protections, ensuring employers cannot alter their obligations through private contracts, with any violation likely leading to legal consequences.

A third example of a mandatory provision is paragraph 32(3) of the EPF Scheme, which states, "Any sum deducted by an employer [or the contractor] from the wages of an employee under this Scheme shall be deemed to have been entrusted to him for the purpose of paying the contribution." Here, "*shall be deemed*" imposes a strict legal obligation, requiring that any wage deductions are

explicitly held for contribution payments. This binding language reinforces that employers and contractors must manage these funds responsibly, aligning with the statute's goal to protect employee contributions.

Examples of Directory Provisions

An example of a directory provision can be observed in Paragraph 72(3) of the EPF Scheme: "Members should satisfy themselves as to the correctness of the annual statement, and any error should be brought to the notice of the Commissioner within six months of the receipt of the statement." Using the term "*should*" here implies a recommendation rather than a strict obligation, which is characteristic of directory provisions.

A second example of a directory provision is Paragraph 39 of the EPF Scheme, which reads: "The Central Government may, in consultation with the Central Board, fix the percentage of administrative charges payable." Here, using "*may*" gives the Central Government discretionary authority rather than imposing a binding requirement. This language allows flexibility in determining administrative charges, signalling that while the government can set them, it is not compelled to do so. The provision thus serves as guidance, aligning with the procedural framework of the Act without enforcing an absolute obligation.

A third example of a directory provision is Paragraph 62 of the EPF Scheme, which reads, "A member may apply to have their life insurance premiums financed from their Provident Fund Account." The use of "*may*" here indicates that the action is optional, both for the member and the Commissioner, who can approve or deny the request. This language reflects the provision's directory nature, offering an additional benefit for members without imposing a mandatory duty.

Directory provisions allow flexibility, suggesting that while compliance is encouraged, non-compliance does not necessarily carry severe legal consequences. In this instance, members are advised to check the correctness of the statement and report any errors, but failing to do so within six months would likely not invalidate the process or result in severe penalties. This language provides a guideline rather than a binding requirement, illustrating how directory provisions can support administrative processes without enforcing rigid compliance.

4. Interpreting the Word "May" in Section 14-B of the EPF Act

It is a well-established principle that using "*may*" in a statute does not automatically indicate that the provision is directory or discretionary. Legislators sometimes use "*may*" as a formality, even when they intend the provision to be mandatory. Therefore, courts must consider several contextual factors to interpret whether "*may*" implies a mandatory obligation or a discretionary power. These include the purpose and structure of the Act, the context and background of the language used, and the legislation's objectives.

Furthermore, when the word "*may*" accompanies a duty that confers a significant benefit to a broad group or advances a remedial purpose, courts may interpret "*may*" as mandatory. For instance, if interpreting "*may*" as discretionary would undermine the Act's core purpose, courts may treat it as imposing an obligation. In cases where giving a discretionary interpretation to "*may*" would defeat the legislative intent or weaken the protections offered by the Act, it should be understood as carrying a mandatory force.

In light of the *Supreme Court of India's judgment in Horticulture Experiment Station Gonikoppal, Coorg vs. Regional Provident Fund Organization* (2022) [Civil Appeal No.2136 of 2012], it becomes clear that *mens rea* or *actus reus* is not required for imposing damages under Section 14-B of the EPF Act. This judgment reaffirmed the position that the imposition of penal damages under Section 14-B is mandatory once there is a default or delay in paying EPF contributions by an employer, regardless of intent or "guilty mind."

The Court held that Section 14-B's purpose is to enforce compliance with EPF contributions as a social security measure, not to assess the employer's intent. Drawing from precedents such as

Union of India v. Dharmendra Textile Processors, [(2008) 13 SCC 369] the Court underscored that the obligation to pay EPF contributions is a civil liability. Accordingly, the failure to comply is sufficient to attract penalties under Section 14-B without any need to establish a deliberate intent to default.

This ruling overrules previous interpretations that allowed discretion based on the employer's intent or circumstances, positioning Section 14-B as a mandatory provision. Thus, once a delay or default is established, the levy of damages becomes a legal requirement, aligning with the Act's objective to ensure timely contributions to safeguard employees' social security.

Conclusion

The distinction between mandatory and directory provisions is fundamental for precise statutory interpretation and effective legal practice. With their binding language and strict enforcement, mandatory provisions safeguard essential legal principles and ensure compliance with core statutory objectives. In contrast, directory provisions offer flexibility, allowing procedural adaptability without compromising substantive rights. This interpretation is especially critical in welfare legislation like the EPF Act, where provisions are crafted to protect employees' social security and allow for administrative discretion.

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कर्मचारी भविष्य निधि संगठन
EMPLOYEES' PROVIDENT FUND ORGANISATION
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)
(Ministry of Labour & Employment, Govt. of India)

एनबीसीसी केंद्र, ब्लॉक-2/NBCC Centre, Block-2
ईस्ट किदवई नगर/ East Kidwai Nagar
नई दिल्ली-110023 / New Delhi-110023
Website: www.epfindia.com | www.epfindia.gov.in | www.epfindia.org