APPLICABILITY OF PROVIDENT FUND ACT AND PENSION SCHEME ON INTERNATIONAL WORKERS (POST AMENDMENT)

The history of development of highly industrialized and economically advanced countries bear eloquent testimony to the fact that effective social security measures adopted by the State for toiling workers were mainly responsible for bringing about their phenomenal prosperity. Needless to mention, if the worker has to be inspired to devote himself whole heartedly to his work, he must be given adequate remuneration, and secondly, there must be provisions to save him from distress and destitution in his old age and his family from utter ruin in case of his premature death or disablement. Keeping in view the Social Security of the workers and his family the framers of our Constitution inserted provisions to this effect viz. Article 38 and 43.

Imbibing the spirit of these provisions of the Constitution the Employee Provident Fund & Miscellaneous Provisions Act, 1952 was enacted by Parliament which came into force with effect from 14 March, 1952.

Presently, the following three schemes are in operation:

- Employees' Provident Fund Scheme, 1952
- Employees' Deposit Linked Insurance Scheme, 1976
- Employees' Pension Scheme, 1995 (replacing the Employees' Family Pension Scheme, 1971).

Originally these Acts were applicable only to Indian workers. The Government of India vide its notification dated 1st October, 2008 has broadened the scope of the Employees Provident Fund Scheme, 1952 and Employees Pension Scheme, 1995 to include specific category of Indian employees working outside India and employees other than Indian employees, holding other than Indian Passport, and working for an establishment in India. The notification was published in the Official Gazette dated October 1, 2008 and becomes effective from that date.

A new category of “International Worker” has been introduced under the provisions of the Amended Provident Fund Scheme. Now after this amendment every International Worker employed with an establishment in India to whom the Provident Fund Act applies, would be required to become a member of the Provident Fund, unless he/she qualifies as an “Excluded Employee”

Salient features of the Employees Pension (Third Amendment) Scheme, 2008 ("Pension Scheme") After the amended Employees Provident Fund Scheme, 1952 and Employees Pension Scheme, 1995 the position is as follows:-

International workman defined: An International worker may be an Indian worker or a foreign national. This means an Indian worker who has divided his/her career between India and another country with whom India has entered into a bilateral Social Security agreement or a foreign national working in India.

If there is a Social Security Agreement Between two countries then the rules regarding Provident Fund will be determined in accordance with the provisions of that Agreement.

In regard to those countries with which India has not entered into any Social Security Agreement, the Provident Fund/pension rules will be governed by the Indian law on Provident Fund/pension i.e., Employees' Provident Funds and Miscellaneous Provisions Act, 1952; Employees Pension Scheme, 1995.

There is no cap on the monthly pay up to which the Provident Fund contribution has to be made by both the employer as well as an employee. Thus if an International workers has the basic wage of Rs. 1,00,000, then the employer as well as the international worker, both will have to contribute on entire basic wage at the rate of 12%.

The cap on the monthly pay up to which the employer's share of contribution has to be diverted to EPS remains at Rs.6500. (15000)

There is not any minimum period of employment in India required to be eligible for

membership. Every eligible International worker has to be enrolled from the first date of his employment in India.

Employers would be required to file a consolidated return with respect to the International Workers within 15 days of the commencement of the Amended Provident Fund Scheme, specifying the International Workers entitled to become members of the fund. The employer would also be required to file monthly returns with the Provident Fund Commissioner. Contribution is calculated on the monthly pay of the employee.

The monthly pay shall be the pay as specified under Para 29 of the EPF Scheme, 1952, which covers:

Basic wages (all emoluments paid or payable in cash while on duty or on leave/holiday except Dearness allowance, House rent allowance, overtime allowance, bonus, commission or any other similar allowance payable in respect of employment any presents made by the employer)

Dearness allowance (all cash payments by whatever name called paid to an employee on account of a rise in the cost of living)

Retaining allowance

Cash value of any food concession

In regard to the rate at which Provident Fund and Pension would be deducted and

contributed, there are following two positions:

A. If the Monthly Pay is upto Rs.6500 15000, then-

Employee’s Pension Scheme, 1995.

1. Contribution by the Employee shall be 12% of the monthly pay; and

2. Contribution by the Employer shall be 12% of the monthly pay. Out of this, 8.33% has to be remitted to the Employees’ Pension Fund and rest 3.67% shall be remitted to the Provident Fund.

B. If the Monthly Pay is more than 6500 1500, then-

1. The Employee shall contribute at 12% of the monthly pay; and

2. The employer shall contribute 12% of Rs. 6500 (8.33% will be remitted towards

Pension Fund and 3.67% shall be remitted towards Provident Fund). The employer

shall also contribute 12% of the amount exceeding Rs. 6500/- and that whole

amount shall be remitted towards Provident Fund.

Upon termination/cessation of the employment, employee will claim his pension or Provident Fund in the following manner:

Pension

If the employee works for more than 10 years before cessation of employment then he will be eligible for monthly pension.

If the employee has worked for more than 6 months and less than 10 years then on the date of cessation/termination of service or on attaining 58 years 5 of age whichever is earlier, he shall be entitled to withdrawal benefits.

In case of permanent and total disablement during the service he/she shall be entitled to pension subject to a minimum of Rs. 250 per month. The monthly member's pension in such cases shall be payable from the date following the date of permanent total disablement and shall be tenable for the lifetime of the member.

In case of death of a member of the scheme, pension to the family shall be admissible from the date of the death of the member.

Provident Fund

58 years is the retirement age.

Family means employees' spouse and children below 25 years of age.

In case of cessation /termination of employment the employee may withdraw the entire Provident Fund.

In case of his death Provident Fund will be payable to his nominees. In case no nomination subsists, or if the nomination relates only to a part of the amount standing to his credit in the Fund, the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall become payable to the members of his family in equal shares.

On permanent and total incapacity for work due to bodily or mental infirmity, member may withdraw the full amount standing to his credit.

Courtesy: Rahul Kumar. Mumbai .