

APPLICABILITY OF THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

OBJECT:

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is an act to provide for the institution of provident funds, pension funds and deposit linked insurance fund for employees in factories and other establishments.

APPLICABILITY:

The Act extends to the whole of India except the State of Jammu and Kashmir. The Object itself indicates the applicability to factories and other establishments. Sec. 1(3) defines the applicability of the Act to the factories and other establishment by fixing minimum number of employees required. Sec.1 (3) provides subject to the provisions contained in Section 16, it applies-

1. to every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed, and
2. to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf.

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

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

Sec. 1(5) provides that 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.

Sec.16 (1) provides that this Act shall not apply-

1. to any establishment registered under the Co-operative Societies Act, 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; or
2. 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

3. 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 pension in accordance with any scheme or rule framed under that Act governing such benefits.

Sec. 16(2) provides that if the Central Government is of opinion that having regard to the financial position of any class of establishment 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 whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.

The above are the provisions in the Act providing the applicability of the Act and inapplicability of the Act. The interpretations of the above provisions lead to many cases in the Courts. Some of the case laws are discussed herein.

CONDITIONS FOR COVERAGE:

In 'Regional Provident Fund Commissioner, Bombay V. Sree Krishna Metal Manufacturing Co., and another' – 1962 (1) LLJ 427 it was held that Sec. 1(3)(a) makes it clear that it is the factories which have to satisfy two tests-

- i. that the number of employees should not be less than twenty; and
- ii. that they must be engaged in any such industry as specified in Schedule I.

In 'T.R. Raghava Iyengar &Co., V. Regional Provident Fund Commissioner' – 1963 (1) LLJ 32 it was held that excluding establishment which may be notified by the Central Government, the Act would apply to an establishment if the following conditions are fulfilled-

1. The establishment must be a factory, which is defined under the Act as any premises in which a manufacturing process is being carried on, with or without the aid of power; and
2. The factory must be engaged in any industry specified in Schedule I of the Act;
3. The factory must be one in which 20 or more persons are employed.

In 'The Osmania University V. The Regional Provident Fund Commissioner and another' – 1985 (51) FLR 605 the Supreme Court held that once it is found that there is an establishment which is a 'factory' engaged in an 'industry' specified in Schedule I and employing 20 or more persons, the provisions of the Act will get attracted to the case and it makes no difference to this legal position that the establishment is run by a larger organization which may be carrying on other additional activities falling outside the Act.

It was held by the Madras High Court in 'Padiyur Sarvodaya Sangh V. Union of India and others' -1999 (2) LLN 224 that for the purpose of applicability of the Act, an establishment need not be a profit earning one. The object of the Act is to provide social security cover to the workers to protect their families in their old age through old age and survivors' pension.

In 'Midland Hospital and Research Centre (P) Limited V. Union of India and others' – 2004 (100) FLR 1152 it was held by the Gauhati High Court that the fact that some of the employees were working for daily wage and some of them were paid stipend is immaterial. Where the establishment was found that the number of employees is more than twenty, it is rightly covered under the Act.

VOLUNTARY COVERAGE:

In 'Forest Development Corporation of Maharashtra Limited V. Regional Provident Fund Commissioner and others' – 2006 (109) FLR 368 the Division Bench of the Nagpur Bench of Bombay High Court held that where the parties themselves directly or indirectly acquiesce that the provisions of the Act be made applicable and start making contribution, the Act would be applicable from the date of contributions. Mere non publication in the Gazette cannot result in holding that the provisions of the Act are not applicable.

In 'Edelstahi Agencies Private Limited V. Regional Provident Fund Commissioner' – 2005 (2) LLJ 108 the Bombay High Court held that the petitioner sought voluntary coverage at an earlier date and the authorities subsequently sought to cover the establishment of the petitioner under Section 1(3), which is erroneous. In the absence of Notification under Section 1(4) of the Act, it cannot be said that the provisions of the Act have been made applicable to the establishment of the petitioner. The jurisdiction of the Department to initiate proceedings under Sec. 14-B read with Sec.7-Q has not been attracted.

RETROSPECTIVE EFFECT:

In 'Aluminium Corporation of India Limited V. Regional Provident Fund Commissioner and others' – AIR 1958 Cal 570, the High Court held that the Act and the scheme cannot be applied retrospectively to any establishment. The Supreme Court in 'District Exhibitors' Association, Muzaffarnagar and others V. Union of India and others' – 1991 (2) LLJ 115, held that the employer cannot be saddled with the liability to pay the employees' contribution for the retrospective period, since he has no right to deduct the same from the future wages payable to the employees. The third proviso to Para 32(1) of the Employees' Provident funds Scheme could be taken advantage of by the employer only where no deduction has been made from the wages of the employees due to accidental mistake or clerical error when the scheme is operative. Such deduction which has not been made by accidental or clerical error could be made from the subsequent wages with the consent in writing of the Inspector concerned.

CLUBBING OF ESTABLISHMENTS:

In 'Associated Industries (Private) Limited V. Regional Provident Fund Commissioner, Kerala' – 1963 (2) LLJ 652, it was held that the management was running a tile factory and an engineering works and both these industries, though separate and distinct, were carried on by them in the same premises and were allowed to be used as one factory and as part of the same establishment under the same licence.

The Madras High Court in 'A. Gangadharan V. Government of India' – 1978 (2) LLJ 317 held that where the financial, managerial and functional integrity of the two units of an employer have been established and it is shown that the office establishment and the printing press of the employer form part of the same establishment, even though the premises are not

adjunct and the employees of the press and the office have two separate unions the conclusions is inescapable and both the activities should be brought under the coverage of the Act as one establishment.

In ‘R.N. Shah and others V. Regional Provident Fund Commissioner’ 1991 (1) LLN 774 it was held that the Notification dated 15.03.1973 specifying that every mess, not being a military mess, employing 20 or more persons, as the class of establishment to which the Act would apply with effect from 31.03.1973 would not apply to a mess run by a residential school. The mess run by a residential school cannot be termed as a separate and distinctive unit from that of the school itself.

ONCE APPLIED CONTINUES TO APPLY:

The word ‘applies’ in Section 1(5) covers all the establishments to which the Act ‘has been applied’ and continues to apply. There is no provision in the Act which deals with the cessation of its application. When a statute sets out the requirements for its application but not for the cessation of its application, it must be held that once it applies it will continue to apply. In ‘J. Aravindadevi V. Union of India and another’ – 2000 (4) LLN 695 it was held Section 1(5) of the Act is intended to have continued application and there should be coverage of the Act to the employees though their number go down the minimum prescribed level for the applicability of the Act.

In ‘T.A. Zainulabdeen V. Regional Provident Fund Commissioner, Kerala’ – 1975 (1) LIC 412 it was held that Section 1(5) of the Act does not prevent the disruption of an establishment and breaking up thereof into new and separate establishments either expressly or by implication. Where a disruption takes place by a partition and different establishments are created with less than twenty persons employed, the liability under the Act does not continue and such separate establishments cannot be treated as departments or branches of the original establishment.

APPLICATION BY ORDER OF COURTS:

1. Nationalized banks are applicable to the Act – ‘The Karnataka Bank Limited, Mangalore and others V. Union of India and others’ – 2006 (4) AIR Kar.R. 499;
2. Attorney’s establishment, not covered – ‘The ACME Company Limited V. Union of India’ – 2004 LLR 1054 – reason – the Act applies to an establishment employing 20 or more persons but the coverage of a firm of advocates by the provident fund authorities under the head ‘attorneys’ is not sustainable because of the fact that the word ‘attorney’ has been deleted from the Advocates Act, 1961;
3. casuals/temporary persons unconnected with the work the establishment not covered – ‘Bikaner Cold Storage Co., Limited V. Regional Provident Fund Commissioner, Rajasthan’ -1981 (10) LLJ 181
4. Inland water establishments covered – ‘Ghatal Steam Navigation Co. Limited V. Union of India and others’ – 2005 (2) LLJ 99;
5. Non commercial clubs covered – ‘Cosmopolitan Club, Madras V. Regional Provident Fund Commissioner, Madras’ – 1967 (1) LLJ 797;
6. Solicitor’s firm is covered – ‘M.G. Poddar V. The Regional Provident Fund Commissioner and another’ – 1971 (1) LLJ 381;

7. Stone quarries covered – ‘Lakshmani Stone Products and Others V. Union of India and others’ – AIR 2001 SC 783;