

**Lesson 6 – Section II** ■ Employees' State Insurance Act, 1948 **417**

and perform any of the functions of the Corporation subject to the general superintendence and control of the Corporation. The standing Committee acts as an executive body for administration of Employees State Insurance Corporation.

### **Medical Benefit Council**

Section 10 empowers the Central Government to constitute a Medical Benefit Council. Section 22 determines the duties of the Medical Benefit Council stating that the Council shall:

- (a) advise the Corporation and the Standing Committee on matters relating to administration of medical benefit, the certification for purposes of the grant of benefit and other connected matters;
- (b) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance; and
- (c) perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

## **EMPLOYEES' STATE INSURANCE FUND**

### **Creation of Fund**

Section 26 of the Act provides that all contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act. The Corporation may accept grants, gifts, donations from the Central or State Governments, local authority, or any individual or body whether incorporated or not, for all, or any of the purposes of this Act. A Bank account in the name of Employees' State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government. Such account shall be operated on by such officers who are authorised by the Standing Committee with the approval of the Corporation.

### **Purposes for which the Fund may be expended**

Section 28 provides that Fund shall be expended only for the following purposes:

- (i) payment of benefits and provisions of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, in accordance with the provisions of this Act and defraying the charge, and costs in connection therewith;
- (ii) payment of fees and allowances to members of the Corporation, the Standing Committee and Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
- (iii) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of officers and other services set up for the purpose of giving effect to the provisions of this Act;
- (iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and where the medical benefit is extended to their families, their families;
- (v) payment of contribution to any State Government, local authority or any private body or individual towards the cost of medical treatment and attendance provided to insured persons and where the medical benefit is extended to their families, their families including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;

**418 PP-LL&P**

- (vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of the assets and liabilities;
- (vii) defraying the cost (including all expenses) of Employees Insurance Courts set up under this Act;
- (viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;
- (ix) payment of sums under any decree, order or award, of any court or tribunal against the Corporation or any of its officers or servants for any act done in execution of his duty or under a compromise or settlement of any suit or any other legal proceedings or claims instituted or made against the Corporation;
- (x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- (xi) defraying expenditure within the limits prescribed, on measure for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
- (xii) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

## **CONTRIBUTIONS**

The contributions have to be paid at such rates as may be prescribed by the Central Government. The present rates of contribution are 4.75 percent and 1.75 percent of workers wages by employers and employees respectively. The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable. The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

### **Principal employer to pay contributions in the first instance**

According to Section 40 of the Act, it is incumbent upon the principal employer to pay in respect of every employee whether directly employed by him or by or through an immediate employer, both the employers contributions and the employees contribution. However, he can recover from the employee (not being an exempted employee) the employees contribution by deduction from his wages and not otherwise. Further Section 40 provides that the principal employer has to bear the expenses of remitting the contributions to that Corporation.

According to Section 39(5) of the Act, if any contribution payable is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of 12 per cent per annum or at such higher rate as may be specified in the regulations, till the date of its actual payment. However, according to proviso to sub-section (5) of Section 39, higher interest specified in the regulations should not exceed the lending rate of interest charged by any scheduled bank. It may be noted that any interest recoverable as stated above may be recovered as an arrear of land revenue or under newly introduced Sections 45-C to 45-I of the Act.

### **Recovery of contribution from immediate employer**

According to Section 41, principal employer who has paid contribution in respect of an employee employed by or through an immediate employer is entitled to recover the amount of contribution so paid (both employers

**Lesson 6 – Section II** ■ Employees' State Insurance Act, 1948 **419**

and employees contribution) from the immediate employer either by deduction from any amount payable to him by the principal employer under any contract or as a debt payable by the immediate employer. However the immediate employer is entitled to recover the employees contribution from the employee employed by or through him by deduction from wages and not otherwise. The immediate employer is required to maintain a register of employees employed by or through him as provided in the Regulations and submit the same to the principal employer before the settlement of any amount payable. He is not required to have separate account with ESI (LAB IC 1999 Kar 1369).

### **Method of payment of contribution**

Section 43 provides for the Corporation to make regulations for payment and collection of contribution payable under this Act and such regulations may provide for:

- (a) the manner and time for payment of contribution;
- (b) the payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, cards or otherwise and regulating the manner, times and conditions in, at and under which, such stamps are to be affixed or impressed;
- (c) the date by which evidence of contributions having been paid is to be received by the Corporation;
- (d) the entry in or upon books or cards or particulars of contribution paid and benefits distributed in the case of the insured persons to whom such books or card relate; and
- (e) the issue, sale, custody, production, inspection and delivery of books or cards and the replacement of books or cards which have been, lost, destroyed or defaced.

### **BENEFITS**

Under Section 46 of the Act, the insured persons, their dependants are entitled to the following benefits on prescribed scale:

- (a) periodical payments in case of sickness certified by medical practitioner;
- (b) periodical payments to an insured workman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement;
- (c) periodical payment to an insured person suffering from disablement as a result of employment injury;
- (d) periodical payment to dependants of insured person;
- (e) medical treatment and attendance on insured person;
- (f) payment of funeral expenses on the death of insured person at the prescribed rate of.

### **General provisions relating to Benefits**

Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.

An insured person is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of maternity or disablement, etc.

## **EMPLOYEES' INSURANCE COURT (E.I. COURT)**

### **Constitution**

Section 74 of the Act provides that the State Government shall by notification in the Official Gazette constitute an Employees' Insurance Court for such local area as may be specified in the notification. The Court shall

420 PP-LL&P

consist of such number of judges as the State Government may think fit. Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of E.I. Court. The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area and may regulate the distribution of business between them.

### **Matters to be decided by E.I. Court**

#### ***(i) Adjudication of disputes***

The Employees' Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.

#### ***(ii) Adjudication of claims***

The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

Proceedings in both the above cases can be initiated by filing application in the prescribed form by the employee or his dependent or employer or the corporation depending who has cause of action.

No Civil Court has power to decide the matters falling within the purview/ jurisdiction of E.I. Court.

### **EXEMPTIONS**

The appropriate Government may exempt any factory/establishment from the purview of this Act, as well as any person or class of persons employed in any factory/establishment, provided the employees employed therein are in receipt of benefits superior to the benefits under the Act. Such exemption is initially given for one year and may be extended from time to time. The applicant has to submit application justifying exemption with full details and satisfy the concerned Government.

### **COMPLIANCES UNDER THE ACT**

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The factory/establishment is covered by the provisions of this Act with effect from .....
2. During the year under review, the provisions of this Act continued to have effect notwithstanding any reduction in the employees below the Statutory Minimum.
3. The factory/establishment had made an application to the regional office within 15 days from the date on which this Act became applicable and the Employer's code number is .....
4. The factory/establishment/class of factory/class of establishment is exempted from complying with the provisions of the Act/any specified area from the operation of this Act vide notification issued by the appropriate government in the official gazette, during the financial year.
5. The factory/establishment has ..... number of employees as defined under section 2 (9) of the Act during the said financial year.
6. All the employees in the factory/establishment to which this Act applies have been insured in the manner provided by the Act.
7. The total contribution (both employer and employee share) at the rates prescribed by the central government was deposited in ..... with the designated branches of..... Bank on or before 21<sup>st</sup> of the month following the calendar month in which the wages fall due during the financial year.

**Lesson 6 – Section II** ■ Employees' State Insurance Act, 1948 **421**

8. There was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act.

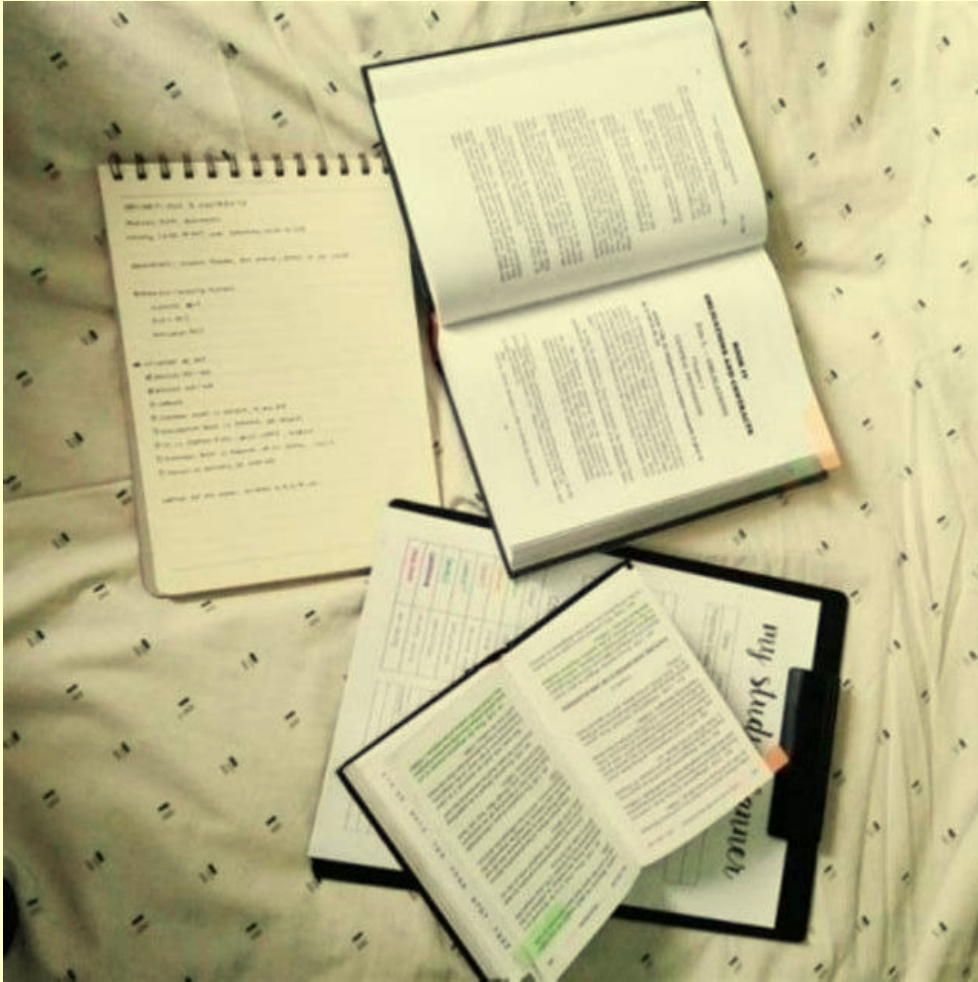
### LESSON ROUND UP

- The law relating to employees' State Insurance is governed by the Employees' State Insurance Act, 1948.
- The objective of the act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to provide for certain other matters in relation there to.
- The Act is applicable to all factories including factories belonging to the Government other than seasonal factories. The appropriate Government may after giving a notice of not less than one month and by notification in the official Gazette, extend the application of the Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Once the Act becomes applicable, the Act shall continue to apply irrespective of the reduction in number of employees or cessation of manufacturing process with the aid of power.
- Every factory or establishment to which this Act applies has to be registered within the specified time and the regulations made in this behalf.
- All the employees in factories or establishments to which this Act applies shall be insured in prescribed manner. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution.
- The ESI Act authorises Central Government to establish Employees State Insurance Corporation for administration of the Employees State Insurance Scheme. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.
- All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act.
- The insured persons, their dependants are entitled to various benefits on prescribed scale. Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.
- The Act empowers State Government to constitute an Employees Insurance Court. The Employees Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.
- The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

### SELF TEST QUESTIONS

1. Discuss the object and scope of the Employees' State Insurance Act, 1948.
2. What are the different kinds of benefits provided under the E.S.I. Act.
3. How is the Employees' Insurance Court constituted and what are the matters to be decided by such a Court?

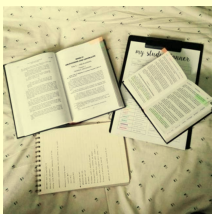




## **Law College Notes & Stuffs**

Exclusive group for Law Students

*Join Us Here for More Materials*



*Law College Notes & Stuffs*

## Section III

# Employees' Provident Funds and Miscellaneous Provisions Act, 1952

### LESSON OUTLINE

- Learning Objectives
- Introduction
- Application of the Act
- Appropriate Government
- Basic Wages
- Contribution
- Exempted Employee
- Pension Fund
- Pension Scheme
- Schemes under the Act
- Employees' Provident Fund Scheme
- Class of Employees entitled and required to join provident fund
- Employees' Pension Scheme
- Employees' Deposit-Linked Insurance Scheme
- Determination and Recovery of Moneys due from and by Employers
- Employer not to reduce Wages
- Transfer of Accounts
- Protection against Attachment
- Power to Exempt
- Compliances under the Act

### LEARNING OBJECTIVES

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a social welfare legislation to provide for the institution of Provident Fund, Pension Fund and Deposit Linked Insurance Fund for employees working in factories and other establishments. The Act aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress.

Accordingly, three schemes are in operation under the Act. These schemes taken together provide to the employees an old age and survivorship benefits, a long term protection and security to the employee and after his death to his family members, and timely advances including advances during sickness and for the purchase/ construction of a dwelling house during the period of membership.

The Act is administered by the Government of India through the Employees' Provident Fund Organisation (EPFO). EPFO is one of the largest provident fund institutions in the world in terms of members and volume of financial transactions that it has been carrying on.

The Central Government has been constituted Employees' Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such by Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The Tribunal consist of one person only and appointed by the Central Government.

Students must have knowledge of the provisions of this Act to be aware of the statutory obligations under the Act.

***The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments. It extends to the whole of India except the State of Jammu and Kashmir.***



## INTRODUCTION

Provident Fund schemes for the benefit of the employees had been introduced by some organisations even when there was no legislation requiring them to do so. Such schemes were, however, very few in number and they covered only limited classes/groups of employees. In 1952, the Employees Provident Funds Act was enacted to provide institution of Provident Fund for workers in six specified industries with provision for gradual extension of the Act to other industries/classes of establishments. The Act extends to whole of India except Jammu and Kashmir. The term pay includes basic wages with dearness allowance, retaining allowance (if any), and cash value of food concession.

**The following three schemes have been framed under the Act by the Central Government:**

- (a) The Employees' Provident Fund Schemes, 1952;
- (b) The Employees' Pension Scheme, 1995; and
- (c) The Employees' Deposit-Linked Insurance Scheme; 1976.

The three schemes mentioned above confer significant social security benefits on workers and their dependents.

## APPLICATION OF THE ACT

According to Section 1(3), the Act, subject to the provisions of Section 16, applies:

- (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed; and
- (b) 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 to do so 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 in the notification.

The Central Government can extend the provisions of the Act to any establishment [including the co-operative society to which under Section 16(1) the provisions of the Act are not applicable by notification in Official Gazette when 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 them [Section 1(4)]. However, before notification is made, parties can opt out of such an agreement (1996 20 CLA 25 Bom.). Once an establishment falls within the purview of the Act, it shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty. [Section 1(5)] Where an establishment to which this Act applied was divided among the partners, the Act would continue to apply to the part of each ex-partner even if the number of persons employed in each part is less than twenty (1986 2 LLJ 137). Where as a result of real and bona fide partition among the owners, an establishment was disrupted and separate and distinct establishments come into existence, allottees with no regular employee, cannot be saddled with liability to pay minimum administrative charges as before (1993 1 LLN 698). For compliance with the Act and the scheme, for an establishment there should be an employer and one or more employees are required to be in existence atleast. When there is not even one employee, it would be difficult to contend that the Act continues to apply to the establishment (1998 LLJ 1 Kar. 780).

The constitutional validity of this Act was challenged on the ground of discrimination and excessive delegation. It was held that the law lays down a rule which is applicable to all the factories or establishments similarly placed. It makes a reasonable classification without making any discrimination between factories placed in the same class or group (*Delhi Cloth and General Mills v. R.P.F. Commissioner A.I.R.* 1961 All. 309).

**Lesson 6 – Section III** ■ Employees' Provident Funds and Miscellaneous Provisions Act, 1952 **425**

*The liability to contribute to the provident fund is created the moment the Scheme is applied to a particular establishment.*

**On the question whether casual or temporary workmen should be included for the purpose of ascertaining the strength of workmen in terms of Section 1(3) it was held by the Rajasthan High Court in *Bikaner Cold Storage Co. Ltd. v. Regional P.F. Commissioner, Rajasthan, 1979 Lab. I.C. 1017*, that persons employed in the normal course of the business of the establishment should be considered as the persons employed for the purposes of Section 1(3)(a) and persons employed for a short duration or on account of some urgent necessity or abnormal contingency, which was not a regular feature of the business of the establishment cannot be considered as employees for the purpose of determining the employment strength in relation to the applicability of Section 1(3)(a). In the case of *P.F. Inspector v. Hariharan, AIR 1971 S.C. 1519*, the Supreme Court held that casual workers are not covered under Section 1(3).**

Section 1(3)(b) empowers the Central Government to apply the Act to trading or commercial establishments whether, such establishments are factories or not.

### **Non-applicability of the Act to certain establishments**

Section 16(1) of the Act provides that the Act shall not apply to certain establishments as stated thereunder. Such establishments include (a) establishments 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 50 persons and working without the aid of power; or (b) 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 (c) 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.

According to Section 16(2), if the Central Government is of opinion that having regard to the financial position of any class of 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 that class of establishments from the operation of this Act for such period as may be specified in the notification.

The date of establishment of a factory is the date when the factory starts its manufacturing process. A change in the ownership does not shift the date of establishment. A mere change in the partnership deed, does not mean that a new business has come into existence for the purpose of Section 16(1) (*P.G. Textile Mills v. Union of India* (1976) 1 LLJ 312).

### **IMPORTANT DEFINITIONS**

To understand the meaning of different Sections and provisions thereto, it is necessary to know the meaning of important expressions used therein. Section 2 of the Act explains such expressions which are given below:

#### **(i) Appropriate Government**

“Appropriate Government” means:

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

### **(ii) Basic Wages**

“Basic Wages” means all emoluments which are earned by an employee while on duty or on leave or on holiday with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

- (i) the cash value of any food concession;
- (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house- rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- (iii) any presents made by the employer. [Section 2(b)]

### **(iii) Contribution**

“Contribution” means a contribution payable in respect of a member under a Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies. [Section 2(c)]

### **(iv) Controlled Industry**

“Controlled Industry” means any industry the control of which by the Union has been declared by the Central Act to be expedient in the public interest. [Section 2(d)]

### **(v) Employer**

“Employer” means

- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, the person so named; and
- (ii) in relation to any other establishment, the person who or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director, or managing agent, such manager, managing director or managing agent. [Section 2(e)]

### **(vi) Employee**

“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 Apprentices Act, 1961 or under the standing orders of the establishment. [Section 2(f)]

The definition is very wide in its scope and covers persons employed for clerical work or other office work in connection with the factory or establishment. The inclusive part of the definition makes it clear that even if a person has been employed through a contract in or in connection with the work of the establishment, he would yet fall within the description of employee within the meaning of the Act.

The dominant factor in the definition of ‘employee in Section 2(f) of the Act is that a person should be employed in or in connection with the work of the establishment. Sons being paid wages are employees (*Goverdhanlal v. REPC* 1994 II LLN 1354). In case of doubt whether a particular person is an employee or not, both the parties should be heard by the Commissioner before deciding the issue (1976-II Labour Law Journal, 309).

**Lesson 6 – Section III** ■ Employees' Provident Funds and Miscellaneous Provisions Act, 1952 **427**

The definition of employee in Section 2(f) of the Act is comprehensive enough to cover the workers employed directly or indirectly and therefore, wherever the word employee is used in this Act, it should be understood to be within the meaning of this definition (*Malwa Vanaspati and Chemical Co. Ltd. v. Regional Provident Fund Commissioner, M.P. Region, Indore*, 1976-1 Labour Law Journal 307).

The definition of "employee", includes a part-time employee, who is engaged for any work in the establishment, a sweeper working twice or thrice in a week, a night watchman keeping watch on the shops in the locality, a gardener working for ten days in a month, etc. (*Railway Employees Co-operative Banking Society Ltd. v. The Union of India*, 1980 Lab. IC 1212). The Government of India, by certain notification extended the application of Act and EPF scheme to beedi industry. It was held that the workers engaged by beedi manufacturers directly or through contractors for rolling beedi at home subject to rejection of defective beedies by manufacturers, were employees (1986 1 SCC 32). But working partners drawing salaries or other allowances are not employees. When members of cooperative society do work in connection with that of society and when wages are paid to them, there would be employer-employee relationship and such member-workers would be covered under the definition (1998 LLJ I Mad. 827).

**(vii) Exempted Employee**

It means an employee to whom a Scheme or the Insurance Scheme as the case may be would, but for the exemption granted under Section 17, have applied. [Section 2(ff)]

**(viii) Exempted Establishment**

It means an establishment in respect of which an exemption has been granted under Section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme as the case may be whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein. [Section 2(fff)]

**(ix) Factory**

It means any premises including the precincts thereof, in any part of which a manufacturing process is being carried on or ordinarily so carried on, whether with the aid of power or without the aid of power. [Section 2(g)]

**(x) Fund**

It means Provident Fund established under the Scheme. [Section 2(h)]

**(xi) Industry**

It means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under Section 4. [Section 2(i)]

**(xii) Insurance Fund**

It means the Deposit-Linked Insurance Fund established under sub-section (2) of Section 6-C. [Section 2(i-a)]

**(xiii) Insurance Scheme**

It means the Employees Deposit-Linked Insurance Scheme framed under sub-section (1) of Section 6-C. [Section 2(i-b)]

**(xiv) Manufacture or Manufacturing Process**

It means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal. [Section 2(i-c)]

**(xv) Member**

“Member” means a member of the Fund. [Section 2(j)]

**(xvi) Occupier of a Factory**

It means the person, who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory. [Section 2(k)]

**(xvii) Pension Fund**

“Pension Fund” means the Employees Pension Fund established under sub-section (2) of Section 6A. [Section 2(kA)]

**(xviii) Pension Scheme**

“Pension Scheme” means the Employees Pension Scheme framed under sub-section (1) of Section 6A. [Section 2(kB)]

**(xix) Scheme**

It means the Employees’ Provident Fund Scheme framed under Section 5. [Section 2(l)]

**(xx) Superannuation**

“Superannuation”, in relation to an employee, who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years. [Section 2(ll)]

***Different departments or branches of an establishment***

Where an establishment consists of different departments or branches situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. (Section 2A)

**SCHEMES UNDER THE ACT**

In exercise of the powers conferred under the Act, the Central Government has framed the following three schemes:

**(A) Employees Provident Fund Scheme**

The Central Government has framed a Scheme called Employees Provident Fund Scheme. The Fund vests in and is administered by the Central Board constituted under Section 5A.

***Administration of the Fund***

(a) Board of Trustees or Central Board: Section 5A provides for the administration of the Fund. The Central Government may by notification in the Official Gazette constitute with effect from such date as may be specified therein, a Board of Trustees, for the territories to which this Act extends.

The Employees Provident Fund Scheme contains provisions regarding the terms and conditions subject to which a member of the Central Board may be appointed and of procedure of the meetings of the Central Board. The Scheme also lays down the manner in which the Board shall administer the funds vested in it however subject to the provisions of Section 6AA and 6C of the Act. The Board also performs functions under the Family Pension Scheme and the Insurance Scheme.

***Class of employees entitled and required to join Provident Fund***

Every employee employed in or in connection with the work of a factory or other establishment to which this

**Lesson 6 – Section III** ■ Employees' Provident Funds and Miscellaneous Provisions Act, 1952 **429**

scheme applies, other than an excluded employee, shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

The term "excluded employee" has been defined in para 2(f) of the Employees' Provident Fund Scheme, 1952 as follows:

'Excluded employee' means:

- (i) an employee who, having been a member of the Fund, withdraw the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph 69;
- (ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds fifteen thousand rupees per month.

*Explanation:* "Pay" includes basic wages with dearness allowance retaining allowance (if any) and cash value of food concession admissible thereon.

- (iii) An apprentice.

*Explanation:* An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.

**Contributions**

As per Section 6, the contribution which shall be paid by the employer to the Fund shall be 10%, 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 through a contractor and the employees contribution shall be equal to the contribution payable by the employer. Employees, if they desire, may make contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable as prescribed by the Government from time to time under the Act. The Government has raised the rate of Provident Fund Contribution from the current 8.33% to 10% in general and in cases of establishments specially notified by the Government, from 10% to 12% with effect from September 22, 1997.

Each contribution shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored.

Dearness allowance shall include the cash value of any food concession allowed to an employee. Retaining allowance is the allowance payable to an employee for retaining his services, when the establishment is not working.

The Provident Fund Scheme has made the payment of contribution mandatory and the Act provides for no exception under which a specified employer can avoid his mandatory liability (*State v. S.P. Chandani*, AIR 1959 Pat. 9).

**Investment:** The amount received by way of Provident Fund contributions is invested by the Board of Trustees in accordance with the investment pattern approved by the Government of India. The members of the Provident Fund get interest on the money standing to their credit in their Provident Fund Accounts. The rate of interest for each financial year is recommended by the Board of Trustees and is subject to final decision by the Government of India.

**Advances/Withdrawals:** Advances from the Provident Fund can be taken for the following purposes subject to conditions laid down in the relevant paras of the Employees Provident Fund Scheme:

- (1) Non-refundable advance for payment of premia towards a policy or policies of Life Insurance of a member;

**430 PP-Labour Laws**

- (2) Withdrawal for purchasing a dwelling house or flat or for construction of a dwelling house including the acquisition of a suitable site for the purpose, or for completing/continuing the construction of a dwelling house, already commenced by the member or the spouse and an additional advance for additions, alteration or substantial improvement necessary to the dwelling house;
- (3) Non-refundable advance to members due to temporary closure of any factory or establishment for more than fifteen days, for reasons other than a strike or due to non-receipt of wages for 2 months or more, and refundable advance due to closure of the factory or establishment for more than six months;
- (4) (i) Non-refundable in case of:
  - (a) hospitalisation lasting one month or more, or
  - (b) major surgical operation in a hospital, or
  - (c) suffering from T.B., Leprosy, Paralysis, Cancer, Mental derangement or heart ailment, for the treatment of which leave has been granted by the employer;(ii) Non-refundable advance for the treatment of a member of his family, who has been hospitalised or requires hospitalisation, for one month or more:
  - (a) for a major surgical operation; or
  - (b) for the treatment of T.B., Leprosy, Paralysis, Cancer, mental derangement or heart ailment;
- (5) Non-refundable advance for daughter/sons marriage, self-marriage, the marriage of sister/brother or for the post matriculation education of son or daughter;
- (6) Non-refundable advance to members affected by cut in the supply of electricity;
- (7) Non-refundable advance in case property is damaged by a calamity of exceptional nature such as floods, earthquakes or riots;
- (8) Withdrawals for repayment of loans in special cases; and
- (9) Non-refundable advance to physically handicapped members for purchasing an equipment required to minimise the hardship on account of handicap.

**Final withdrawal:** Full accumulations with interest thereon are refunded in the event of death, permanent disability, superannuation, retrenchment or migration from India for permanent settlement abroad/taking employment abroad, voluntary retirement, certain discharges from employment under Industrial Disputes Act, 1947, transfer to an establishment/factory not covered under the Act.

In other cases, with permission of commissioner or any subordinate officer to him, a member is allowed to draw full amount when he ceases to be in employment and has not been employed in any establishment to which the Act applies for a continuous period of atleast 2 months. This requirement of 2 months waiting period shall not apply in cases of female members resigning from service for the purpose of getting married.

### **(B) Employees' Pension Scheme**

Under Section 6A, Government has introduced a new pension scheme styled Employees' Pension Scheme, 1995 w.e.f. 16.11.1995, in place of Family Pension Scheme, 1971.

The Employees' Pension Scheme is compulsory for all the persons who were members of the Family Pension Scheme, 1971. It is also compulsory for the persons who become members of the Provident Fund from 16.11.1995 i.e. the date of introduction of the Scheme. The PF subscribers who were not members of the Family Pension Scheme, have an option to join this Pension Scheme. The Scheme came into operation w.e.f. 16.11.1995, but the employees, including those covered under the Voluntary Retirement Scheme have an option to join the scheme w.e.f. 1.4.1993.

**Lesson 6 – Section III** ■ Employees' Provident Funds and Miscellaneous Provisions Act, 1952 **431**

Minimum 10 years contributory service is required for entitlement to pension. Normal superannuation pension is payable on attaining the age of 58 years. Pension on a discounted rate is also payable on attaining the age of 50 years. Where pensionable service is less than 10 years, the member has an option to remain covered for pensionary benefits till 58 years of age or claim return of contribution/ withdrawal benefits.

The Scheme provides for payment of monthly pension in the following contingencies (a) Superannuation on attaining the age of 58 years; (b) Retirement; (c) Permanent total disablement; (d) Death during service; (e) Death after retirement/ superannuation/permanent total disablement; (f) Children Pension; and (g) Orphan pension.

The amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service.

### **(C) Employees' Deposit-Linked Insurance Scheme**

The Act was amended in 1976 and a new Section 6C was inserted empowering the Central Government to frame a Scheme to be called the Employees' Deposit-Linked Insurance Scheme for the purpose of providing life insurance benefit to the employees of any establishment or class of establishments to which the Act applies.

The Central Government has accordingly framed the Employees' Deposits-Linked Insurance Scheme, 1976. It came into force on the 1st August, 1976.

*1. Application of the Scheme:* The Employees Deposit-Linked Insurance Scheme, 1976 is applicable to all factories/establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies.

All the employees who are members of the Provident Funds in both the exempted and the unexempted establishments are covered under the scheme.

*2. Contributions to the Insurance Fund:* The employees are not required to contribute to the Insurance Fund. The employers are required to pay contributions to the Insurance Fund at the rate of 1% of the total emoluments, i.e., basic wages, dearness allowance including, cash value of any food concession and retaining allowance, if any.

*3. Administrative expenses:* The employers of all covered establishments are required to pay charges to the Insurance Fund.

*4. Nomination:* The nomination made by a member under the Employee Provident Fund Scheme 1952 or in the exempted provident fund is treated as nomination under this scheme. Provisions of Section 5 have overriding effect and will override the personal laws of the subscriber in the matters of nominations (LLJ I 1996 All. 236).

*5. Payment of assurance benefit:* In case of death of a member, an amount equal to the average balance in the account of the deceased during the preceding 12 months or period of membership, whichever is less shall be paid to the persons eligible to receive the amount or the Provident Fund accumulations.

*6. Exemption from the Scheme:* Factories/establishments, which have an Insurance Scheme conferring more benefits than those provided under the statutory Scheme, may be granted exemption, subject to certain conditions, if majority of the employees are in favour of such exemption.

## **DETERMINATION OF MONEYS DUE FROM EMPLOYERS**

### **(i) Determination of money due**

Section 7A vests the powers of determining the amount due from any employer under the provisions of this Act and deciding the dispute regarding applicability of this Act in the Central Provident Fund Commissioner,



#### 432 PP-Labour Laws

Additional Provident Fund Commissioner, Deputy Provident Fund Commissioner, or Regional Provident Fund Commissioner. For this purpose he may conduct such inquiry as he may deem necessary.

Central Government has already constituted Employees Provident Fund Appellate Tribunal, consisting of a presiding officer who is qualified to be a High Court Judge or a District Judge with effect from 1st July, 1997 in accordance with provisions of Section 7D. The term, service conditions and appointment of supporting staff are governed by Sections 7E to 7H. Any person aggrieved by order/notification issued by Central Government/ authority under Sections 1(3), 1(4), 3, 7A(1), 7C, 14B or 7B (except an order rejecting an application for review) may prefer an appeal. The tribunal shall prescribe its own procedure and have all powers vested in officers under Section 7A.

The proceedings before the tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for Section 196 of Indian Penal Code and Civil, 1908, it shall be deemed to be a Civil Court for all purposes of Section 195 and Chapter XXVI of Code of Procedure. The appellant can take assistance of legal practitioner and the Government shall appoint a presenting officer to represent it. Any order made by the Tribunal finally disposing of the appeal cannot be questioned in any Court.

#### **(ii) Mode of recovery of moneys due from employers**

Section 8 prescribes the mode of recovery of moneys due from employers by the Central Provident Fund Commissioner or such officer as may be authorised by him by notification in the Official Gazette in this behalf in the same manner as an arrear of land revenue. Recovery of arrears of Provident Fund cannot be effected from unutilised part of cash-credit of an industrial establishment (1998 LAB IC Kar 3044).

#### **(iii) Recovery of moneys by employers and contractors**

Section 8A lays down that the amount of contribution that is to say the employer's contribution as well as the employee's contribution 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.

A contractor from whom the amounts mentioned above, 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. However, notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to above from the basic wages, dearness allowance and retaining allowance payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

#### **(iv) Measures for recovery of amount due from employer**

The authorised officer under this Act shall issue a certificate for recovery of amount due from employer to the Recovery Officer. The Recovery Officer has got the powers to attach/sell the property of employer, call for arrest and detention of employer, etc. for effecting recovery. The employer cannot challenge the validity of the certificate. The authorised officer can grant time to the employer to make the payment of dues.

The Central Provident Fund Commissioner may require any person, from whom amount is due to the employer, to pay directly to the Central Provident Fund Commissioner/Officer so authorised and the same will be treated as discharge of his liability to the employer to the extent of amount so paid. (Sections 8B to 8G)

#### **(v) Priority of payment of contributions over other debts**

Section 11 of the Act provides that the contribution towards Provident Fund shall rank prior to other payments in the event of employer being adjudicated insolvent or where it is a company on which order of winding up has been made. The amount shall include:

- (a) the amount due from the employer in relation to an establishment to which any Scheme or Insurance Scheme applies in respect of any contribution payable to the Fund, or the Insurance, damages recoverable under Section 14B, accumulations required to be transferred under sub-section (2) of Section 15 or any charges payable by him under any other provisions of this Act or of any provision of the Scheme or the Insurance Scheme; or
- (b) the amount due from employer in relation to an exempted establishment in respect of any contribution to the Provident Fund or any Insurance Fund in so far as it relates to exempted employees under the rules of the Provident Fund, or any Insurance Fund or any contribution payable by him towards the Pension Fund under Sub-section (6) of Section 17, damages recoverable under Section 13B or any charges payable by him to the appropriate Government under any provisions of this Act or any of the conditions specified under Section 17.

#### **EMPLOYER NOT TO REDUCE WAGES**

Section 12 prohibits an employer not to reduce directly or indirectly the wages of any employee to whom the Scheme or the Insurance Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund or life insurance to which the employee is entitled under the terms of employment, express or implied, simply by reason of his liability for the payment of any contribution to the Fund or the Insurance Fund or any charges under this Act or the Scheme or the Insurance Scheme.

#### **TRANSFER OF ACCOUNTS**

Section 17A(1) of the Act provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtain re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund, or as the case may be, in the Provident Fund of the establishment left by him shall be transferred within such time as may be specified by Central Government in this behalf to the credit of his account in the Provident Fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that Provident Fund permit such transfer.

Sub-section (2) further provides that where as employee employed in an establishment to which this Act does not apply, leaves his employment and obtain re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the Provident Fund of the establishment left by him, may, if the employee so desires and also rules in relation to such Provident Fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the Provident Fund of the establishment in which he is re-employed.

#### **PROTECTION AGAINST ATTACHMENT**

Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree. Sub-section (1) of Section 10 provides that the amount standing to the credit of any member in the Fund or any exempted employee in a Provident fund shall not in any way, be capable of being assigned or charged and shall not be liable to attachment under any decree or order or any Court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909 nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to or have any claim on any such amount.

**434 PP-Labour Laws**

It is further provided in sub-section (2) that any amount standing to the credit of a member in the Fund or of an exempted employee in a Provident Fund at the time of his death and payable to his nominee under the Scheme or the rules of the Provident Fund shall, subject to any deduction authorised by the said scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court. There is a statutory vesting of the fund on dependents after the death of the subscriber which on such vesting becomes absolute property of dependent and cannot be held to have inherited by dependent.

The above provision shall apply in relation to the Employees' Pension Scheme or any other amount payable under the Insurance Scheme as they apply in relation to any amount payable out of the fund.

**POWER TO EXEMPT**

Section 17 authorises the appropriate Government to grant exemptions to certain establishments or persons from the operation of all or any of the provisions of the Scheme. Such exemption shall be granted by notification in the Official Gazette subject to such conditions as may be specified therein.

**COMPLIANCES UNDER THE ACT**

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The factory/establishment is covered by the provisions of this Act with effect from.....

Or

The factory/establishment is covered under the provisions of this Act by a notification dated ..... given by the government in the official gazette.

2. The establishment has duly paid its contribution to Employees' Provident Fund, Employees' Family Pension Scheme, Employees' Deposit Linked Insurance Scheme set up under the Act during the financial year.
3. The establishment has set up a separate Provident Fund Trust and has complied with the provisions of the Act during the financial year.
4. The establishment has sent a consolidated return within fifteen days of the commencement of the Employees' Provident Fund Scheme to the commissioner during the financial year.

Or

The establishment has no employees entitled to become members of the Employees' Provident Fund during the financial year. Therefore, the establishment has duly filed the 'NIL' return to the Commissioner.

5. During the year under review, the establishment has duly filed returns with the Commissioner in respect of employees qualifying to become members of the Employees' Provident Fund and employees leaving the service during the financial year.
6. The establishment has sent a consolidated return within three months of the commencement of the Employees' Pension Scheme to the commissioner.

Or

The establishment has no employees entitled to become members of the Employees' Family Pension Fund during the financial year. Therefore the establishment has duly filed the 'NIL' return to the Commissioner.

7. The establishment has also duly sent to the commissioner, the consolidated annual contribution

**Lesson 6 – Section III** ■ Employees' Provident Funds and Miscellaneous Provisions Act, 1952 **435**

statement showing the total amount of recoveries made during the year from the wages of each member and the total amount contributed by the employer in respect of each such member during the financial year.

8. There was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act.

### LESSON ROUND UP

- The Employee's Provident Funds and Miscellaneous Provisions Act, 1952 is a welfare legislation enacted for the purpose of instituting a Provident Fund for employees working in factories and other establishments.
- The Act aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and in some other contingencies.
- Presently, the following three Schemes are in operation under the Act : Employees' Provident Funds Scheme, 1952; Employees' Deposit Linked; Insurance Scheme, 1976; Employees' Pension Scheme, 1995.
- The Act is applicable to factories and other classes of establishments engaged in specific industries, classes of establishments employing 20 or more persons.
- The Central Government is empowered to apply the provisions of this Act to any establishment employing less than 20 persons after giving not less than two months notice of its intent to do so by a notification in the official gazette.
- Once the Act has been made applicable, it does not cease to be applicable even if the number of employees falls below 20. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with mutual consent of the employers and the majority of the employees under Section 1(4) of the Act.
- Every employee employed in or in connection with the work of a factory or establishment shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.
- Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree. The Act authorises the appropriate Government to grant exemptions to certain establishments or persons from the operation of all or any of the provisions of the Scheme.

### SELF TEST QUESTIONS

1. Describe the applicability and non-applicability of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to establishments and the employees.
2. Explain the Schemes provided under the Employees' Provident Fund and Miscellaneous Provisions Act.
3. Whether payment of contribution has priority over other debts?
4. Explain the scope and objective of Employees' Provident Fund and Miscellaneous Provisions Act.
5. Write short notes on (i) Employer (ii) Employee.



# Section IV

## Payment of Gratuity Act, 1972

### LESSON OUTLINE

- Learning Objectives
- Introduction
- Application of the Act
- Establishments to which the Act applies
- Who is an 'employee'?
- Continuous Service
- Retirement
- Superannuation
- Wages
- When is gratuity payable?
- To whom is gratuity payable
- Amount of gratuity payable
- Nomination
- Forfeiture of gratuity
- Exemptions
- The Controlling Authority and the Appellate Authority
- Rights and obligations of employees
- Rights and obligations of the employer
- Recovery of gratuity
- Protection of gratuity
- Compliances under the Act
- Lesson round up
- Self -Test Questions

### LEARNING OBJECTIVES

Gratuity is an old age retiral social security benefit. It is a lump sum payment made by an employer to an employee in consideration of his past service when the employment is terminated. In the case of employment coming to an end due to retirement or superannuation, it enables the affected employee to meet the new situation which quite often means a reduction in earnings or even total stoppage of earnings. In the case of death of an employee, it provides much needed financial assistance to the surviving members of the family. Gratuity schemes, therefore, serve as instruments of social security and their significance in a developing country like India where the general income level is low cannot be over emphasised.

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:- (i) on his superannuation; or (ii) on his retirement or resignation; or (iii) on his death or disablement due to accident or disease, However, the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement. The employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned for every completed year of service or part thereof in excess of six months.

The object of this lesson is to impart knowledge to the students about the legal frame work pertaining to payment of gratuity.

***The Payment of Gratuity Act, 1972 provides for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. It extends to the whole of India.***

## INTRODUCTION

Gratuity is a lump sum payment made by the employer as a mark of recognition of the service rendered by the employee when he retires or leaves service. The Payment of Gratuity Act provides for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.

The Payment of Gratuity Act has been amended from time to time to bring it in tune with the prevailing situation. Recently the Act has been amended twice to enhance the ceiling on amount of gratuity from Rs.10 lakh to Rs.20 lakh as well as to widen the scope of the definition of “employee” under section 2 (e) of the Act.

## APPLICATION OF THE ACT

Application of the Act to an employed person depends on two factors. Firstly, he should be employed in an establishment to which the Act applies. Secondly, he should be an “employee” as defined in Section 2(e).

According to Section 1(3), the Act applies to:

- (a) every factory, mine, oilfield, plantation, port and railway company;
- (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- (c) such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months as the Central Government may, by notification specify in this behalf.

In exercise of the powers conferred by clause (c), the Central Government has specified Motor transport undertakings, Clubs, Chambers of Commerce and Industry, Inland Water Transport establishments, Solicitors offices, Local bodies, Educational Institutions, Societies, Trusts and Circus industry, in which 10 or more persons are employed or were employed on any day of the preceding 12 months, as classes of establishments to which the Act shall apply.

A shop or establishment to which the Act has become applicable once, continues to be governed by it, even if the number of persons employed therein at any time after it has become so applicable falls below ten. (Section 3A)

## WHO IS AN EMPLOYEE?

The definition of “employee” under section 2 (e) of the Act has been amended by the Payment of Gratuity (Amendment) Act, 2009 to cover the teachers in educational institutions retrospectively with effect from 3rd April, 1997. The amendment to the definition of “employee” has been introduced in pursuance to the judgment of Supreme Court in *Ahmedabad Private Primary Teachers’ Association v. Administrative Officer*, AIR 2004 SC 1426.

According to Section 2(e) as amended by the Payment of Gratuity (Amendment) Act, 2009 “employee” means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

## OTHER IMPORTANT DEFINITIONS

### Appropriate Government

“Appropriate Government” means:

- (i) in relation to an establishment:
  - (a) belonging to, or under the control of, the Central Government,
  - (b) having branches in more than one State,
  - (c) of a factory belonging to, or under the control of the Central Government.
  - (d) of a major port, mine, oilfield or railway company, the Central Government.
- (ii) in any other case, the State Government. [Section 2(a)]

It may be noted that many large establishments have branches in more than one State. In such cases the ‘appropriate Government’ is the Central Government and any dispute connected with the payment or non-payment of gratuity falls within the jurisdiction of the ‘Controlling Authority’ and the ‘Appellate Authority’ appointed by the Central Government under Sections 3 and 7.

A Company Secretary should know whether the ‘appropriate Government’ in relation to his establishment is the Central Government or the State Government. He should also find out who has been notified as the ‘Controlling Authority’ and also who is the ‘Appellate Authority’. It may be noted that any request for exemption under Section 5 of the Act is also to be addressed to the ‘appropriate Government’. It is, therefore, necessary to be clear on this point.

### Continuous Service

According to Section 2A, for the purposes of this Act:

- (1) An employee shall be said to be in ‘continuous service’ for a period if he has, for that period been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), layoff, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;
- (2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer:
  - (a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than:
    - (i) one hundred and ninety days in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
    - (ii) two hundred and forty, days in any other case;
  - (b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than:



440 PP-LL&P

- (i) ninety five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
- (ii) one hundred and twenty days in any other case;

*Explanation:* For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which:

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;
  - (ii) he has been on leave with full wages, earned in the previous year;
  - (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
  - (iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.
- (3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent, of the number of days on which the establishment was in operation during such period.

Service is not continuous, in case of legal termination of service and subsequent re-employment.

Gratuity cannot be claimed on the basis of continuous service on being taken back in service after break in service of one and a half year on account of termination of service for taking part in an illegal strike, where the employee had accepted gratuity for previous service and later withdrawn from the industrial dispute (*Balaram v. Phoenix Mills Ltd.*, 1999 CLA Bom.19).

### Family

Family, in relation to an employee, shall be deemed to consist of:

- (i) in case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any,
- (ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any. [Section 2(h)]

*Explanation:* Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption lawful, such child shall be deemed to be excluded from the family of the employee.

### Retirement

“Retirement” means termination of the service of an employee otherwise than on superannuation. [Section 2(q)]

### Superannuation

“Superannuation” in relation to an employee, means the attainment by the employee of such age as is fixed

in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment. [Section 2(r)]

### Wages

“Wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance. [Section 2(s)]

### WHEN IS GRATUITY PAYABLE?

According to Section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease.

**Note:** The completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.

Further, the period of continuous service is to be reckoned from the date of employment and not from the date of commencement of this Act (CLA-1996-III-13 Mad.). Mere absence from duty without leave can not be said to result in breach of continuity of service for the purpose of this Act. [*Kothari Industrial Corporation v. Appellate Authority*, 1998 Lab IC, 1149 (AP)]

### TO WHOM IS GRATUITY PAYABLE?

It is payable normally to the employee himself. However, in the case of death of the employee, it shall be paid to his nominee and if no nomination has been made, to his heirs and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

### Amount of Gratuity Payable

Gratuity is calculated on the basis of continuous service as defined above i.e. for every completed year of service or part in excess of six months, at the rate of fifteen days wages last drawn. The maximum amount of gratuity allowed under the Act is Rs. 20 lakh. The ceiling on the amount of gratuity from Rs. 10 lakh to Rs.20 lakh has been enhanced by the Payment of Gratuity (Amendment) Act, 2018.

### Nomination

An employee covered by the Act is required to make nomination in accordance with the Rules under the Act for the purpose of payment of gratuity in the event of his death. The rules also provide for change in nomination.

### Forfeiture of Gratuity

The Act deals with this issue in two parts. Section 4(6)(a) provides that the gratuity of an employee whose services have been terminated for any act of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited to the extent of the damage or loss or caused. The right of forfeiture is limited to the extent of damage. In absence of proof of the extent of damage, the right of forfeiture is not available (LLJ- II-1996-515 MP).

#### 442 PP-LL&P

Section 4(6)(b) deals with a case where the services of an employee have been terminated:

- (a) for riotous and disorderly conduct or any other act of violence on his part, or
- (b) for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.

In such cases the gratuity payable to the employee may be wholly or partially forfeited. Where the service has not been terminated on any of the above grounds, the employer cannot withhold gratuity due to the employee. Where the land of the employer is not vacated by the employee, gratuity cannot be withheld (*Travancore Plywood Ind. v. Regional JLC, Kerala*, 1996 LLJ-II-14 Ker.). Assignment of gratuity is prohibited, it cannot be withheld for non vacation of service quarters by retiring employees (*Air India v. Authority under the Act*, 1999 CLA 34 Bom. 66).

### EXEMPTIONS

The appropriate Government may exempt any factory or establishment covered by the Act or any employee or class of employees if the gratuity or pensionary benefits for the employees are not less favourable than conferred under the Act.

### The Controlling Authority and the Appellate Authority

The controlling authority and the Appellate Authority are two important functionaries in the operation of the Act. Section 3 of the Act says that the appropriate Government may by notification appoint any officer to be a Controlling Authority who shall be responsible for the administration of the Act. Different controlling authorities may be appointed for different areas.

Section 7(7) provides for an appeal being preferred against an order of the Controlling Authority to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf.

### RIGHTS AND OBLIGATIONS OF EMPLOYEES

#### Application for Payment of Gratuity

Section 7(1) lays down that a person who is eligible for payment of gratuity under the Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer. Rule 7 of the Payment of Gratuity (Central) Rules, 1972, provides that the application shall be made ordinarily within 30 days from the date gratuity becomes payable. The rules also provides that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before 30 days of the date of superannuation or retirement.

A nominee of an employee who is eligible for payment of gratuity in the case of death of the employee shall apply to the employee ordinarily within 30 days from the date of the gratuity becomes payable to him. [Rule 7(2)]

Although the forms in which the applications are to be made have been laid down, an application on plain paper with relevant particulars is also accepted.

The application may be presented to the employer either by personal service or be registered post with acknowledgement due. An application for payment of gratuity filed after the period of 30 days mentioned above shall also be entertained by the employer if the application adduces sufficient cause for the delay in preferring him claim. Any dispute in this regard shall be referred to the Controlling Authority for his decision.

## RIGHTS AND OBLIGATIONS OF THE EMPLOYER

### Employers Duty to Determine and Pay Gratuity

Section 7(2) lays down that as soon as gratuity becomes payable the employer shall, whether the application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.

Section 7(3) of the Act says that the employer shall arrange to pay the amount of gratuity within thirty days from the date of its becoming payable to the person to whom it is payable.

Section 7(3A): If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 10 per cent per annum:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

### Dispute as to the Amount of Gratuity or Admissibility of the Claim

If the claim for gratuity is not found admissible, the employer shall issue a notice in the prescribed form to the applicant employee, nominee or legal heir, as the case may be, specifying reasons why the claim for gratuity is not considered admissible. A copy of the notice shall be endorsed to the Controlling Authority.

If the disputes relates as to the amount of gratuity payable, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him. According to Section 7(4)(e), the Controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made

- (i) to the applicant where he is the employee; or
- (ii) where the applicant is not the employee, to the nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

### Recovery of Gratuity

Section 8 provides that if the gratuity payable under the Act is not paid by the employer within the prescribed time, the Controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same together with the compound interest thereon at such rate as the Central Government may be notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

“Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act”.

### Protection of Gratuity

Gratuity has been exempted from attachment in execution of any decree or order of any Civil, Revenue or Criminal Court. This relief is aimed at providing payment of gratuity to the person or persons entitled there to without being affected by any order of attachment by an decree of any Court.

### COMPLIANCES UNDER THE ACT

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The Establishment has observed the following while paying the gratuity to the persons who are entitled to it:

- (a) It has paid gratuity at the rate of fifteen days wages for every completed year of service or part thereof in excess of six months, calculated on the rates of wages last drawn by the employee concerned. Since the employees of the establishment are monthly rated employees, the fifteen days wages were calculated by dividing the monthly rates of wages drawn by him by twenty-six and multiplying the quotient by fifteen.

OR

Since the employees were employed on piece rate basis, the gratuity was paid at the rate of fifteen days wages for every completed year of service calculated at an average total wages during a period of three months immediately preceding the termination of employment.

OR

Since the Registered Establishment is a seasonal establishment, gratuity was paid at the rate of seven days for each season.

- (b) In the event of death or disablement of any employee due to accident or disease, the gratuity was paid without the requirement of five years of continuous service.
  - (c) In the event of death, the gratuity was paid to nominees or legal heir(s) or where the person entitled was a minor, the gratuity was deposited with the Controlling Authority.
  - (d) The maximum amount of gratuity paid to any employee did not exceed Rs. 20,00,000/-.
2. The Establishment made deductions from the gratuity in respect of those employees who were liable for any act, wilful omission or negligence, which caused damages or loss to, or destruction of, property of the Registered Establishment. The total deductions were only to the extent of loss or damages so caused.
  3. The Establishment also made deductions from the gratuity in respect of an employee whose services were terminated for an offence involving moral turpitude.
  4. The Establishment has paid its liability under PGA within thirty days from the date it became payable.
  5. The Establishment has deposited with the Controlling Authority the liability under PGA to the extent admitted by it, which was disputed by the person entitled to it. The Establishment has, accordingly, made application to the Controlling Authority for the settlement of dispute.
  6. (a) The Establishment sent Notice to the person entitled to gratuity under the PGA within fifteen days from the date of receipt of application for gratuity from such person with the directions to collect the gratuity within thirty days from the date of receipt of application.  
(b) Where the Establishment did not admit its liability under the PGA, it has specified the reasons for the same  
(c) Copies of Notices under clause (a) and (b) were also endorsed to the Controlling Authority.
  7. The liability of gratuity was settled in cash or at the request of the person claiming by Demand Draft or Banker's Cheque. Where the amount of gratuity was less than Rs. 1,000/-, the same was sent by Postal Money Order. The Controlling Authority was given details of all payments made.

### LESSON ROUND UP

- The Act is applicable to every factory, shop or an establishment, in which ten or more persons are employed, or were employed on any day of the proceeding twelve months.
- A shop or establishment to which the Act has become applicable shall continue to be governed by the Act even if the number of persons employed falls below 10 at any subsequent stage.
- An employee is eligible for receiving gratuity payment only after he has completed five years of continuous service. This condition of five years is not necessary if the termination of the employment of an employee is due to death or disablement. The maximum amount of Gratuity payable is Rs. 20 lakhs.
- Each employee is required to nominate one or more member of his family, as defined in the Act, who will receive the gratuity in the event of the death of the employee.
- Any person to whom the gratuity amount is payable shall make a written application to the employer. The employer is required to determine the amount of gratuity payable and give notice in writing to the person to whom the same is payable and to the controlling authority thereby specifying the amount of gratuity payable.
- The employer is under obligation to pay the gratuity amount within 30 days from the date it becomes payable. Simple interest at the rate of 10% p.a. is payable on the expiry of the said period.
- Gratuity can be forfeited for any employee whose services have been terminated for any act, willful omission or negligence causing damage or destruction to the property belonging to the employer. It can also be forfeited for any act which constitutes an offence involving moral turpitude.
- If any person makes a false statement for the purpose of avoiding any payment to be made by him under this Act, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both. If an employer contravenes any provision of the Act, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with a fine, which may vary from ten thousand rupees to twenty thousand rupees.

### SELF TEST QUESTIONS

1. State the scope and object of the Payment of Gratuity Act?
2. Define the following terms:
  - (i) Continuous service
  - (ii) Employee
  - (iii) Wages.
3. When gratuity becomes payable? To whom gratuity is payable?
4. Who are entitled for payment of gratuity?
5. Whether gratuity is liable to be forfeited? If so, under what circumstances?



# Section V

## Maternity Benefit Act, 1961

### LESSON OUTLINE

- Learning Objectives
- Introduction
- Appropriate Government
- Establishment
- Wages
- Maternity benefit
- Employment of or work by women prohibited during certain period
- Right to payment of maternity benefits
- Notice of claim for maternity benefit
- Nursing breaks
- Creche Facility
- Abstract of Act and Rules there under to be exhibited
- Maintenance of Register and Record
- Penalty
- LESSON ROUND UP
- SELF TEST QUESTION

### LEARNING OBJECTIVES

Article 42 of the Constitution of India states that the State shall make provision for securing just and humane conditions of work and for maternity relief. The Maternity Benefit Act, 1961 regulates the employment of women in factories, mines, the circus industry, plantations and shops or establishments employing 10 or more persons except the employees who are covered under the Employees' State Insurance (ESI) for certain periods before and after child-birth and provides for maternity and other benefits. The Employees' State Insurance Act, 1948 (ESI Act) which also provides for maternity and certain other benefits. The coverage under the ESI Act is, however, at present restricted to factories and certain other specified categories of establishments located in specified areas. The Maternity Benefit Act, 1961 still applicable to women employees employed in establishments which are not covered by the ESI Act, as also to women employees, employed in establishments covered by the ESI Act, but who are out of its coverage because of the wage-limit.

Under the Maternity Benefit Act, 1961, women employees are entitled to maternity benefit at the rate of average daily wage for the period of their actual absence up to **26 weeks** due to the delivery. In cases of illness arising due to pregnancy, etc., they are entitled to additional leave with wages for a period of one month. They are also entitled to six.

Weeks benefit in case of miscarriage. The Maternity Benefit Act, 1961 provides that every woman entitled to maternity benefit shall also be entitled to receive from her employer medical bonus. The Maternity Benefit Act, 1961 also makes certain other provisions to safeguard the interest of pregnant women workers.

Therefore, it is essential for the students to be familiar with the general principles of maternity benefit stipulated under the Act.

*The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits. It extends to the whole of India.*



## INTRODUCTION

Article 39(e) &(f) of the Constitution of India provides that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Maternity Benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. The Maternity Benefit Act, 1961 is applicable to mines, factories, circus industry, plantations, shops and establishments employing ten or more persons. It can be extended to other establishments by the State Governments.

## Definition

**“Appropriate Government”** means in relation to an establishment being a mine or an establishment wherein persons are employed for the exhibition of equestrian acrobatic and other performances the Central Government and in relation to any other establishment the State Government. {Section 3(a)}

**“Child”** includes a still-born child. {Section 3(b)}

**“Commissioning Mother”** means a biological mother who uses her egg to create an embryo implanted in any other woman. {Section 3(ba)}

**“Employer”** means –

- (i) in relation to an establishment which is under the control of the government a person or authority appointed by the government for the supervision and control of employees or where no person or authority is so appointed the head of the department;
- (ii) in relation to an establishment under any local authority the person appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority;
- (iii) in any other case the person who or the authority which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager managing director managing agent or by any other name such person; {Section 3(d)}

**“Establishment”** means –

- (i) a factory;
- (ii) a mine;
- (iii) a plantation;
- (iv) an establishment wherein persons are employed for the exhibition of equestrian acrobatic and other performance;
- (iva) a shop or establishment; or
- (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable {Section 3(e)};

**“Maternity benefit”** means the payment referred to in sub-section (1) of section 5 {Section 3(h)};

**“Wages”** means all remuneration paid or payable in cash to a woman if the terms of the contract of employment express or implied were fulfilled and includes -

- (1) such cash allowances (including dearness allowance and house rent allowances) as a woman is for the time being entitled to
- (2) incentive bonus and
- (3) the money value of the concessional supply of food grains and other articles but does not include –
  - (i) any bonus other than incentive bonus;
  - (ii) over-time earnings and any deduction or payment made on account of fines;
  - (iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and
  - (iv) any gratuity payable on the termination of service; {Section 3(n)}

### **Employment of or work by women prohibited during certain periods**

Section 4 of the Act provides that no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. It also specifies that no women shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

It may be noted that if a pregnant women makes request to her employer, she shall not be given to do during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery, any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

### **Right to payment of maternity benefits**

Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

The average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

A woman shall be entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery. However the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery. If a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death. Where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period. If the child also dies during the said period, then, for the days up to and including the date of the death of the child.

A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

450 PP-LL&P

In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

### **Notice of claim for maternity benefit**

Section 6 deals with notice of claim for maternity benefit and payment thereof. As per the section any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in prescribed form, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery. Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit. The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof, that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

### **Nursing breaks**

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

### **Creche Facility**

Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities. The employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.

Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.

### **Abstract of Act and rules there under to be exhibited**

As per section 19 an abstract of the provisions of this Act and the rules made there under in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

### **Registers**

Every employer shall prepare and maintain such registers, records and muster-rolls and in prescribed manner under section 20 of the Act.

### **Penalty for contravention of Act by employer**

Section 21 provides that if any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of the Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but

**Lesson 6 – Section V** ■ Maternity Benefit Act, 1961 **451**

which may extend to five thousand rupees. However, the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

If any employer contravenes the provisions of the Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under the Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both. Where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

### LESSON ROUND UP

- The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits. Such benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working.
- Maternity benefit means the payment referred to in sub-section (1) of section 5.
- Employer shall not knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.
- Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.
- The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery.
- Any woman employed in an establishment and entitled to maternity benefit under the provisions of the Act may give notice in writing in prescribed form, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under the Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.
- Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.
- Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities.
- Every employer shall prepare and maintain such registers, records and muster-rolls and in prescribed manner under the Act.

### SELF TEST QUESTIONS

1. Explain the scope and object of the Maternity Benefit Act, 1961
2. What do you mean by maternity benefit?
3. State the provision regarding nursing break under the Act.
4. Is it necessary for a working woman to give notice to its employer for maternity benefit?
5. Is it mandatory for maintenance of Register under the Maternity Benefit Act, 1961?



# Section VI

## The Unorganised Workers' Social Security Act, 2008

### LESSON OUTLINE

- Learning Objectives
- Background
- Unorganised sectors in India
- Introduction
- Constitutional provisions
- The Unorganised Workers' Social Security Act, 2008
- Short title, extent and commencement
- Definitions
- Framing of scheme
- Funding of Central Government Schemes
- National Social Security Board.
- State Social Security Board
- Funding of State Government Schemes
- Record keeping by District Administration
- Workers facilitation centres.
- Eligibility for registration and social security benefits
- Power of Central Government to give directions
- Vacancies, etc., not to invalidate proceedings.
- Power to make rules by Central Government
- Power to make rules by State Government
- Saving of certain laws
- Power to remove difficulties
- LESSON ROUND UP
- SELF TEST QUESTION

### LEARNING OBJECTIVES

'The Unorganised Workers' Social Security Act, 2008' providing for the social security and welfare of unorganised workers. The quest for social security and freedom from want and distress has been the consistent urge of man through ages. This urge has assumed a several forms, according to the needs of people and their level of social consciousness, the advance of technology and the pace of economic development. These measures have introduced an element of stability and protection in the midst of stress and strains of life. It is a major aspect of public policy and the extent of its prevalence is a measure of the progress made by a country towards the ideal of a welfare state. There are nine components of the social security which configure its scope. It envisages that the members of a community shall be protected by a collective action against social risks causing undue hardships and privation to individuals whose prime resources can seldom be adequate to meet them. It covers through an appropriate organisations, certain risks are such than an individual of small means cannot effectively provide for them by his own ability or foresight alone or even in private combination with his colleagues. The crux of the labour problem is the mutual conflict between the employer and the employee over the question of adequacy of which the collective bargaining and the industrial conflict are two main aspects.

The directive principles of our constitution reflect the concern of the state to protect and promote the interests of weaker sections of our population. The constitution of India was enshrined with the provisions in a way to ensure social security to the human beings, in particular the workmen. The constitution guarantees the promotion of welfare of the people and eradication of the inequalities and it provides for the state to direct its policy towards securing livelihood, common hood etc., By the constitution the operation of a legal system shall be secured and effective provisions were made by the state for the participation of workers in undertakings and for securing just and humane conditions of work and a decent standard of life.

***An Act to provide for the social security and welfare of unorganised workers and for other matters connected therewith or incidental thereto.***

## BACKGROUND

The Unorganized Sector Workers are those who have not been able to pursue their common interests due to constraints like casual nature of employment, absence of definite employer-employee relationship, ignorance, illiteracy, etc. The unorganized workers are also generally low paid and a majority of them are devoid of any of the social security benefits like life and medical insurance, health care, maternity benefits, old age pension etc. which are available to the workers in the organized sector under the Employees State Insurance Act, 1948; the Employees Provident Fund and Other Miscellaneous Provisions Act, 1952 and the Factories Act, 1948, etc.

The unorganized sector workers can be categorized broadly into four categories, viz.

- (i) Occupation: Small and marginal farmers, landless agricultural labourers, share croppers, fishermen, those engaged in animal husbandry, in beedi rolling, beedi labeling and beedi packing, workers in building and construction, etc.
- (ii) Nature of Employment: self employed, attached agricultural labourers, bonded labourers migrant workers, contract and casual labourers come under this category.
- (iii) Specially distressed categories: Toddy tappers, scavengers, carriers of head loads, drivers of animal driven vehicles, loaders and unloaders belong to this category; and
- (iv) Service categories: Midwives, domestic workers, fishermen and women, barbers, vegetable and fruit vendors, newspaper vendors, etc., come under this category.

## Unorganised sectors in India

The working force in industries is considered as a weaker section. But the growth and economy has led to two contradictory demands for labour, on one hand organised labour seem to have grown into strong and to impeding the progress of liberalization. This has led to moves to curb labour such as through amendments to the industrial disputes act and trade unions act, or through some sort of exist policy.

On the other hand, manual labour is seen as weak and exploited and there are demands for protection of such organised labour, such as child labour, garment workers, construction workers, agricultural labour and even home workers. This anomalous situation has arisen because, labour is now divided into two classes-

- (a) organised labour which is strongly protected by law and has their owns auriferous trade unions and
- (b) unorganised labour which is unprotected and more often than not, exploited before liberalization in economy, unorganised sector workers constituted 89 percent of the work force. Now they constitute 93 percent and yet they remain uncovered by protective legislations. This is a dangerous situation where a large section of population doesn't receive the benefits of liberalization and consequently social inequality widens.

The distinguishing feature of the unorganised sector is non applicability of most of the labour laws and other regulations providing for decent working conditions, job security and social security to the workers. The unorganised workers lack collective bargaining power and are therefore susceptible to excessive exploitation. They work under poor working conditions and receive far lower wages/remuneration as compared to the organised sector, even for comparable jobs. Most of the employment in this sector is seasonal and the workers therefore have no job guarantee. This also leads to large scale migration of workers from one place to another leading to un-stability of work and residence which further often leads to discontinuity of the education of their children. In cities, they live in slums without proper housing and sanitation. Health care and maternity benefits which are statutorily available in the organised sector are not available for them. The legislations providing for social securities for old-age, health-care and assistance in the event of death, marriage and accidents etc., like the Workmen's Compensation Act, 1923; Employees State Insurance Act, 1948; Maternity Benefits Act, 1961;

**Lesson 6 – Section VI** ■ The Unorganised Workers' Social Security Act, 2008 **455**

Industrial Disputes Act, 1974; Payment of Gratuity Act, 1972; Employee Provident Fund and Miscellaneous Provisions Act, 1952 etc., do not apply to them. The combined effect of the above factors is that many of them are generally, forced to lead an undignified and servile life.

There are some special sectoral laws applicable to particular sectors of the unorganised. Under this category are laws like the Building and Construction Workers Act 1996, the Bonded Labour System (Abolition) Act 1976, The Interstate Migrant Workers Act 1979, The Dock Workers Act 1986, The Plantation Labour Act 1951, The Transport Workers Act, The Beedi and Cigar Workers Act 1966, The Child Labour (Prohibition and Regulation) Act 1986, and The Mine Act 1952.

**Constitutional provisions :**

India being a socialistic democratic state, has a commitment of providing social and economic justice to its citizens for the survival of democracy. The directive principles of our constitution reflect the concern of the state to protect and promote the interests of weaker sections of our population.

1. *Article 38:* the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life.
2. *Article 39-A:* The operation of a legal system shall be secured by the state which promotes justice, on a basis of equal opportunity and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are denied to any citizen by reason of economic or other disabilities.
3. *Article 42:* The state shall make provisions for securing just and humane conditions of work and for maternity relief.
4. *Article 43:* The state shall endeavour to secure, by suitable legislation or economic organization or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social opportunities and in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

**Introduction:**

Finally, India has enacted **The Unorganised Workers' Social Security Act, 2008** for providing social security to the Unorganised Sector. The Act has come into force w.e.f. 16<sup>th</sup> May, 2009. It extends to the whole of India.

**Definitions (Section 2)**

In this Act, unless the context otherwise requires,-

- a. **“employer”** means a person or an association of persons, who has engaged or employed an unorganised worker either directly or otherwise for remuneration;
- b. **“home-based worker”** means a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs;
- c. **“identity card”** means a card, document or certificate issued to an unorganised worker by the District Administration under sub-section (3) of section 10;
- d. **“National Board”** means the National Social Security Board for unorganised workers constituted under sub-section (1) of section 5;
- f. **“organised sector”** means an enterprise which is not an unorganised sector;



456 PP-LL&P

- h. **“registered worker”** means an unorganised worker registered under sub-section (3) of section 10;
- i. **“Schedule”** means the Schedule annexed to the Act;
- j. **“State Board”** means the (name of the State) State Social Security Board for unorganised workers constituted under sub-section (1) of section 6;
- k. **“self-employed worker”** means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government;
- l. **“unorganised sector”** means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten;
- m. **“unorganised worker”** means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act; and
- n. **“wage worker”** means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.

### Framing of scheme (Section 3)

1. The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to-
  - a. life and disability cover;
  - b. health and maternity benefits;
  - c. old age protection; and
  - d. any other benefit as may be determined by the Central Government.
2. The schemes included in the Schedule 1 to this Act shall be deemed to be the welfare schemes under sub-section (1).
3. The Central Government may, by notification, amend the Schedules annexed to this Act.
4. The State Government may formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to-
  - a. provident fund;
  - b. employment injury benefit;
  - c. housing;
  - d. educational schemes for children;
  - e. skill upgradation of workers;
  - f. funeral assistance; and
  - g. old age homes.

#### **Funding of Central Government Schemes (Section 4)**

1. Any scheme notified by the Central Government may be-
  - i. wholly funded by the Central Government; or
  - ii. partly funded by the Central Government and partly funded by the State Government; or
  - iii. partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the Central Government.
2. Every scheme notified by the Central Government shall provide for such matters that are necessary for the efficient implementation of the scheme including the matters relating to,-
  - i. scope of the scheme;
  - ii. beneficiaries of the scheme;
  - iii. resources of the scheme;
  - iv. agency or agencies that will implement the scheme;
  - v. redressal of grievances; and
  - vi. any other relevant matter.

#### **National Social Security Board (Section 5)**

1. The Central Government shall, by notification, constitute a National Board to be known as the National Social Security Board to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.
2. The National Board shall consist of the following members, namely: -
  - a. Union Minister for Labour and Employment-Chairperson, ex officio;
  - b. the Director General (Labour Welfare)-Member-Secretary, ex officio; and(c) thirty-four members to be nominated by the Central Government, out of whom-
    - i. seven representing unorganised sector workers;
    - ii. seven representing employers of unorganised sector;
    - iii. seven representing eminent persons from civil society;
    - iv. two representing members from Lok Sabha and one from Rajya Sabha;
    - v. five representing Central Government Ministries and Departments concerned; and
    - vi. five representing State Governments.
3. The Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.
4. The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the National Board shall be such as may be prescribed: Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the Minorities and Women.

458 PP-LL&P

5. The term of the National Board shall be three years.
6. The National Board shall meet at least thrice a year, at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.
7. The members may receive such allowances as may be prescribed for attending the meetings of the National Board.
8. The National Board shall perform the following functions, namely:-
  - a. recommend to the Central Government suitable schemes for different sections of unorganised workers;
  - b. advise the Central Government on such matters arising out of the administration of this Act as may be referred to it;
  - c. monitor such social welfare schemes for unorganised workers as are administered by the Central Government;
  - d. review the progress of registration and issue of identity cards to the unorganised workers;
  - e. review the record keeping functions performed at the State level;
  - f. review the expenditure from the funds under various schemes; and
  - g. undertake such other functions as are assigned to it by the Central Government from time to time.

#### **State Social Security Board (Section 6)**

1. Every State Government shall, by notification, constitute a State Board to be known as (name of the State) State Social Security Board to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.
2. The State Board shall consist of the following members, namely: -
  - a. Minister of Labour and Employment of the concerned State-Chairperson, ex officio;
  - b. the Principal Secretary or Secretary (Labour)-Member-Secretary, ex officio; and
  - c. twenty-eight members to be nominated by the State Government, out of whom-
    - i. seven representing the unorganised workers;
    - ii. seven representing employers of unorganised workers;
    - iii. two representing members of Legislative Assembly of the concerned State;
    - iv. five representing eminent persons from civil society; and
    - v. seven representing State Government Departments concerned.
3. The Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.
4. The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the State Board shall be such as may be prescribed: Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the Minorities and Women.
5. The term of the State Board shall be three years.

**Lesson 6 – Section VI** ■ The Unorganised Workers' Social Security Act, 2008 **459**

6. The State Board shall meet atleast once in a quarter at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.
7. The members may receive such allowances as may be prescribed for attending the meetings of the State Board.
8. The State Board shall perform the following functions, namely:-
  - a. recommend the State Government in formulating suitable schemes for different sections of the unorganised sector workers;
  - b. advise the State Government on such matters arising out of the administration of this Act as may be referred to it;
  - (c) monitor such social welfare schemes for unorganised workers as are administered by the State Government;
  - c. review the record keeping functions performed at the District level;
  - d. review the progress of registration and issue of cards to unorganised sector workers;
  - e. review the expenditure from the funds under various schemes; and
  - f. undertake such other functions as are assigned to it by the State Government from time to time.

**Funding of State Government Schemes (Section 7)**

1. Any scheme notified by the State Government may be-
  - i. wholly funded by the State Government; or
  - ii. partly funded by the State Government, partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the State Government.
2. The State Government may seek financial assistance from the Central Government for the schemes formulated by it.
3. The Central Government may provide such financial assistance to the State Governments for the purpose of schemes for such period and on such terms and conditions as it may deem fit.

**Record keeping by District Administration (Section 8)**

The record keeping functions for the purpose of this Act shall be performed by the District Administration: Provided that the State Government may direct that the record keeping function shall be performed by-

- a. the District Panchayat in rural areas; and
- b. the Urban Local Bodies in urban areas.

**Workers facilitation centres (Section 9)**

The State Government may set up such Workers' facilitation centres as may be considered necessary from time to time to perform the following functions, namely:-

- a. disseminate information on available social security schemes for the unorganised workers;
- b. facilitate the filling, processing and forwarding of application forms for registration of unorganised workers;

460 PP-LL&P

- c. assist unorganised worker to obtain registration from the District Administration;
- d. facilitate the enrollment of the registered unorganised workers in social security schemes.

#### **Eligibility for registration and social security benefits (Section 10)**

1. Every unorganised worker shall be eligible for registration subject to the fulfilment of the following conditions, namely:-
  - a. he or she shall have completed fourteen years of age; and
  - b. a self-declaration by him or her confirming that he or she is an unorganised worker.
2. Every eligible unorganised worker shall make an application in the prescribed form to the District Administration for registration. (*The Unorganised Worker's Social Security Rules, 2009:R12. The application shall be made in Form 1 to the District Administration.*)
3. Every unorganised worker shall be registered and issued an identity card by the District Administration which shall be a smart card carrying a unique identification number and shall be portable.
4. If a scheme requires a registered unorganised worker to make a contribution, he or she shall be eligible for social security benefits under the scheme only upon payment of such contribution.
5. Where a scheme requires the Central or State Government to make a contribution, the Central or State Government, as the case may be, shall make the contribution regularly in terms of the scheme.

#### **Power of Central Government to give directions( Section 11)**

The Central Government may give directions to -

- i. the National Board; or
- ii. the Government of a State or the State Board of that State, in respect of matters relating to the implementation of the provisions of this Act.

#### **Vacancies, etc., not to invalidate proceedings (Section 12)**

No proceedings of the National Board or any State Board shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the National Board or, as the case may be, the State Board.

#### **Power to make rules by Central Government ( Section 13)**

1. The Central Government may, by notification, make rules to carry out the provisions of this Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - a. the contributions to be collected from the beneficiaries of the scheme or the employers under sub-section (1) of section 4;
  - b. the number of persons to be nominated, the term of office and other conditions of service of members, the procedure to be followed in the discharge of functions by, and the manner of filling vacancies of, the National Board under sub-section (4) of section 5;
  - c. the rules of procedure relating to the transaction of the business at the meeting of the National Board under sub-section (6) of section 5;
  - d. the allowances for attending the meetings of the National Board under sub-section (7) of section 5;

**Lesson 6 – Section VI** ■ The Unorganised Workers' Social Security Act, 2008 **461**

- e. the form for making an application for registration under sub-section (2) of section 10; and(f) any other matter which is required to be, or may be, prescribed.

Pursuant to these powers, the Central Government has made the rules called “The Unorganised Worker’s Social Security Rules, 2009.”

**Power to make rules by State Government (Section 14)**

1. The State Government may, by notification, make rules to carry out the provisions of this Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - a. the number of persons to be nominated, the term of office and other conditions of service of members, the procedure to be followed in the discharge of functions by, and the manner of filling vacancies of, the State Board under sub-section (4) of section 6;
  - b. the rules of procedure relating to the transaction of business at the meetings of the State Board under sub-section (6) of section 6;
  - c. the allowances for attending the meetings of the State Board under sub-section (7) of section 6;
  - d. the contributions to be collected from the beneficiaries of the scheme or the employers under sub-section (1) of section 7;
  - e. the form in which the application for registration shall be made under sub-section (2) of section 10; and
  - f. any other matter which is required to be, or may be, prescribed.

**Section 16. Saving of certain laws (Section 14)**

Nothing contained in this Act shall affect the operation of any corresponding law in a State providing welfare schemes which are more beneficial to the unorganised workers than those provided for them by or under this Act.

**Power to remove difficulties( Section 17)**

1. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty: Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.
2. Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

**SCHEDULE I**

[See Sections 2(1) and (3)] Social Security Schemes for the Unorganised Workers]

S. No.	Name of the Scheme
1.	Indira Gandhi National Old Age Pension Scheme.
2.	National Family Benefit Scheme.
3.	Janani Suraksha Yojana.
4.	Handloom Weavers' Comprehensive Welfare Scheme.

5.	Handicraft Artisans' Comprehensive Welfare Scheme.
6.	Pension to Master craft persons.
7.	National Scheme for Welfare of Fishermen and Training and Extension.
8.	Janshree Bima Yojana.
9.	Aam Admi Bima Yojana.
10.	Rashtriya Swasthya Bima Yojana.

**SCHEDULE II**

S. No.	Name of the Act
1.	The Workmen's Compensation Act 1923 (8 of 1923).
2.	The Industrial Disputes Act 1947 (14 of 1947).
3.	The Employees' State Insurance Act 1948 (34 of 1948).
4.	The Employees' Provident Funds and Miscellaneous Provisions Act 1952 (19 of 1952).
5.	The Maternity Benefit Act 1961 (53 of 1961).
6.	The Payment of Gratuity Act 1972 (39 of 1972)

**LESSON ROUND UP**

- The Unorganised Workers' Social Security Act, enacted in 2008, provides for the formulation of welfare schemes by the Centre and State for the benefit on unorganized sector workers.
- The Act is provided with the purpose and object of providing social security and welfare of the unorganized workers. The provisions of this Act were extended to the whole of Indian territories.
- The Act provides for the registration of workers and issuance of smart cards to the workers with unique social security numbers in order to provide social security to workers in the unorganised sector.
- The Act casts a duty upon the Central government to formulate suitable welfare schemes for unorganized workers on matters relating to (a) life and disability cover (b) health and maternity benefits (c) old age protection (d) any other benefit which the Central government may determine. There are 10 schemes formulated by the government under Schedule I to the Act.
- The Act further states that State governments may formulate welfare schemes relating to provident fund, employment injury benefit, housing, educational schemes for children, skill upgradation of workers, funeral assistance and old age homes.
- National and State Social Security Boards are mandated to be constituted under the Act to perform the functions assigned to it under the Act.
- The Act defines organized sector, unorganized sector, unorganized worker, and wage worker, self-employed worker and home-based worker thus covering a large area of paid workers in the unorganized sector.
- The "unorganized sector" is defined so that it includes enterprises owned by individuals or self-employed workers and where the enterprise employs workers, the number of such workers is less than ten.







# Section VII

## Apprentices Act, 1961

### LESSON OUTLINE

- Object, scope of the Act
- Apprentice
- Apprentice Training
- Qualification for being engaged as an apprentice
- Contract of apprenticeship
- Obligations of employers
- Obligations of apprentices
- Records and Returns
- LESSON ROUND UP
- SELF TEST QUESTIONS

### LEARNING OBJECTIVES

The Apprentices Act, 1961 was enacted to regulate and control the programme of training of apprentices and for matters connected therewith. The term apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. While, apprenticeship training means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.

The Act makes it obligatory on part of the employers both in public and private sector establishments having requisite training infrastructure as laid down in the Act. Every employer shall have the obligations in relation to an apprentice to provide the apprentice with training in his/ her trade in accordance with the provisions of the Act, and the rules made there under. In order to make the apprenticeship more responsive to youth and industry, the Apprentices Act, 1961 has been amended in 2014 with the objective of expanding the apprenticeship opportunities for youth.

***The Apprentices Act, 1961 enacted to regulate and control the programme of training of apprentices and for matters connected therewith. It extends to whole of India.***