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support the only conclusion that the core of the cause of action is custom and/or term of service, not sounding in or conditioned by profits. The omission to mention the name of a festival as a matter of pleading did not detract from the claim of customary bonus. An examination of the totality of materials leads to the inevitable result that what had been claimed by the workmen was bonus based on custom and service condition, not one based on profit.

Question

Critically analyse the above case.

Source: <http://indiankanoon.org/doc/191016/>

9.6 Summary

- The Payment of Bonus Act, 1965 (Act No. 21 of 1965) is an important law on the topic of wages and bonus.
- The Payment of Bonus Act, 1965 is the principal Act for the payment of bonus to the employees which was formed with an objective for rewarding employees for their good work for the organization.
- It is a step forward to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour with the employees.
- The Payment of Bonus Act provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.
- It extends to the whole of India and is applicable to every factory and to every other establishment where 20 or more workmen are employed on any day during an accounting year.
- The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees.
- An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for fraud; or riotous or violent behaviour while on the premises of the establishment; or theft, misappropriation or sabotage of any property of the establishment.
- Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.
- The Payment of Bonus Act, 1965 provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.
- The purpose of payment of bonus is to bridge the gap between wages paid and ideal of a living wage.

9.7 Keywords

Accounting Year: An accounting year is a twelve (to eighteen) month period over which a company's accounts are calculated.

Adjudication: Adjudication is a procedure for resolving disputes without resorting to lengthy and expensive court procedure.

Allocable Surplus: Allocable surplus means in relation to an employer, being a company (other than a banking company) which has not made arrangements prescribed under Income Tax Act for the declaration on payment of dividend in accordance with section 194 of that Act, 67% of such available surplus in an accounting year.

Bonus: A bonus payment is usually made to employees in addition to their base salary as part of their wages.

Direct Tax: A tax, such as income tax, that is levied on the income or profits of the person who pays it, rather than on goods or services.

Disqualification: The action of disqualifying or the state of being disqualified.

Gross Profits: Gross profit or sales profit is the difference between revenue and the cost of making a product or providing a service, before deducting overhead, payroll, taxation, and interest payments.

Inspectors: An official employed to ensure that official regulations are obeyed, esp. in public services.

Net profit: The profits after expenses not included in the calculation of gross profit have been paid.

Offences: A breach of a law or rule; an illegal Act.

Rights: Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory.

9.8 Review Questions

1. Who is entitled to bonus under the Payment of Bonus Act, 1965?
2. Explain the meaning of "Accounting year" under the Payment of Bonus Act, 1965.
3. Explain the meaning of 'Allocable Surplus' and 'Available Surplus' stated in the Payment of Bonus Act, 1965.
4. X, a temporary employee drawing a salary of ₹ 3,000 per month, in an establishment to which the Payment of Bonus Act, 1965 applies was prevented by the employers from working in the establishment for two months during the financial year 2001-2002, pending certain inquiry. Since there were no adverse findings 'X' was re-instated in service, later, when the bonus was to be paid to other employees, the employers refuse to pay bonus to 'X', even though he has worked for the remaining ten months in the year. Referring to the provisions of the Payment of Bonus Act, 1965 examine the validity of employer's refusal to pay bonus to 'X'.
5. The employer is a banking company. Point out so as to what items are required to be added to the "Net Profit" by the employer for calculating the "Gross Profit" in accordance with the First Schedule of the Payment of Bonus Act, 1965.
6. Prakash Chandra is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year:
 - (a) overtime allowance,
 - (b) dearness allowance
 - (c) commission on sales

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- (d) employer's contribution towards pension fund
- (e) value of food.

Examine as to which of the above payments form part of "salary" of Prakash Chandra under the provisions of the Payment of Bonus Act, 1965.

7. Specify the kinds of establishments which are not covered under the Payment of Bonus Act, 1965.
8. Referring the provisions of the Payment of Bonus Act, 1965, state whether the following persons are entitled to bonus under the Act:
 - (i) An apprentice;
 - (ii) An employee dismissed on the ground of misconduct;
 - (iii) A temporary workman;
 - (iv) A piece-rated worker.
9. Can the Payment of Bonus Act be made applicable to an establishment in the public sector?
10. Discuss the powers of Inspectors.
11. Describe the Offences and Penalties of Inspectors.

Answers: Self Assessment

- | | |
|----------------------|----------------------|
| 1. True | 2. False |
| 3. True | 4. Available Surplus |
| 5. Direct | 6. Private |
| 7. Salary or Wages | 8. Employee |
| 9. ₹ 3500 | 10. True |
| 11. False | 12. True |
| 13. Official Gazette | 14. Inspector |
| 15. Six | |

9.9 Further Readings



Books

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Online links

http://business.gov.in/legal_aspects/wages_1965.php

<http://taxguru.in/corporate-law/main-provisions-of-payment-of-bonus-act-1965-in-brief.html>

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Objectives

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After studying this unit, you will be able to:

- Explain the genesis of the Act
- Discuss the authorities under trade union
- Get an overview of the registration of trade union
- Describe the amalgamation, dissolution and penalties in trade union

Introduction

In the previous unit, we dealt with Payment of Bonus Act. Beside the Bombay Industrial Relations Act, 1946, and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, Trade Unions Act, 1926 is the only legal framework for the trade unions by conceding to workmen their right of association and organising unions. It permits any seven persons to form their union and get it registered under the Act. Registration of unions is optional and not compulsory. The National Commission on Labour (1969) recommended compulsory recognition of trade unions, but this recommendation is still under the consideration of the Government. However, the (1982) amendment of the Industrial Disputes Act, 1947, makes registration compulsory virtually by defining the term "Trade Union", for the purposes of this Act, as a Union registered under the Trade Unions Act, 1926. This gives Unions certain rights and immunities which unregistered Trade Unions do not enjoy. Therefore, workers tend to be members of registered trade unions. Besides specifying the procedure for registration of union, this Act lays down the guidelines for the day to day working of the registered unions. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding The Trade Union Act.

10.1 Genesis of the Act

Trade union is a voluntary organization of workers pertaining to a particular trade, industry or a company and formed to promote and protect their interests and welfare by collective action. They are the most suitable organisations for balancing and improving the relations between the employer and the employees. They are formed not only to cater to the workers' demand, but also for inculcating in them the sense of discipline and responsibility.

In India, the first organised trade union was formed in 1918 and since then they have spread in almost all the industrial centres of the country. The legislation regulating these trade unions is the Indian Trade Unions Act, 1926. The Act deals with the registration of trade unions, their rights, their liabilities and responsibilities as well as ensures that their funds are utilised properly. It gives legal and corporate status to the registered trade unions. It also seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the working class. The Act is applicable not only to the union of workers but also to the association of employers. It extends to whole of India. Also, certain Acts, namely, the Societies Registration Act, 1860; the Co-operative Societies Act, 1912; and the Companies Act, 1956 shall not apply to any registered trade union, and that the registration of any such trade union under any such Act shall be void.

The Act is administered by the Ministry of Labour through its Industrial Relations Division. The Division is concerned with improving the institutional framework for dispute settlement and amending labour laws relating to industrial relations. It works in close co-ordination with the Central Industrial Relations Machinery (CIRM) in an effort to ensure that the country gets a stable, dignified and efficient workforce, free from exploitation and capable of generating higher levels of output. The CIRM, which is an attached office of the Ministry of Labour, is also known

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as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. The CIRM is headed by the Chief Labour Commissioner (Central). It has been entrusted with the task of maintaining industrial relations, enforcement of labour laws and verification of trade union membership in central sphere. It ensures harmonious industrial relations through:-

- Monitoring of industrial relations in Central Sphere;
- Intervention, mediation and conciliation in industrial disputes in order to bring about settlement of disputes;
- Intervention in situations of threatened strikes and lockouts with a view to avert the strikes and lockouts;
- Implementation of settlements and awards.

10.1.1 Objectives of Trade Union

They aim to:-

- Secure fair wages for workers and improve their opportunities for promotion and training.
- Safeguard security of tenure and improve their conditions of service.
- Improve working and living conditions of workers.
- Provide them educational, cultural and recreational facilities.
- Facilitate technological advancement by broadening the understanding of the workers.
- Help them in improving levels of production, productivity, discipline and high standard of living.
- Promote individual and collective welfare and thus correlate the workers' interests with that of their industry.

10.1.2 Basic Provisions

According to the Trade Unions Act, 1926, 'trade union' means "any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions". The basic provisions of the Act are:-

1. The Act provides for the registration of the trade unions with the 'Registrars of Trade Unions' set up in different States, like the Office of Registrar (Trade Union) set up by the Government of National Capital Territory of Delhi. For registration of a trade union, seven or more members of the union can submit their application in the prescribed form to the Registrar of trade unions.



Notes The application shall be accompanied by a copy of the 'rules of the trade union' and a statement giving the following particulars:- (i) Names, occupations and addresses of the members making the application; (ii) The name of the trade union and the address of its head office; (iii) The titles, names, ages, addresses and occupations of the office bearers of the trade union as per the format given in the Trade Unions Act 1926. The Registrar, on being satisfied that the Union has complied with all the requirements of this Act, shall register the trade union. Thereafter, it shall issue a certificate of registration in the prescribed form as a conclusive evidence of registration of that Trade Union.

2. The registered trade unions (workers and employers) are required to submit annual statutory returns to the Registrar regarding their membership, general funds, sources of income and items of expenditure and details of their assets and liabilities, which in turn submits a consolidated return of their state in the prescribed proformae to Labour Bureau, Ministry of Labour and Employment. The Labour Bureau on receiving the annual returns from different States/Union Territories consolidates the all India statistics and disseminates them through its publication entitled the 'Trade Unions in India' and its other regular publications.
3. The general funds of a registered trade union shall not be spent on any other objects than those specified in the Act. Also, a registered trade union may constitute a separate fund, from contributions separately levied for or made to that fund, for the promotion of the civic and political interest of its members.



Did u know? No member shall be compelled to contribute to such fund and a member who does not contribute to the said fund shall not be excluded from any benefits of the trade union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union by reason of his contribution to the said fund.

4. No office-bearer or member of a registered trade union shall be liable to punishment under the Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as specified in the Act, unless the agreement is an agreement to commit an offence.
5. No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such an act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills.
6. The account books of a registered trade union and the list of members thereof shall be open to inspection by an office-bearer or member of the trade union at such times as may be provided for in the rules of trade union.
7. A person shall be disqualified for being chosen as, and for being a member of, the executive or any other office-bearer or registered trade union if- (i) he has not attained the age of eighteen years; (ii) he has been convicted by a court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.
8. Every office-bearer or other person bound by the rules of the trade union shall be punishable with the payment of fine, if:-
 - ❖ Default is made on the part of any registered trade union in giving any notice or sending any statement or other document as required by or under any provision of this Act; or
 - ❖ Any person wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement or in or from any copy of rules or of alterations of rules sent to the Registrar; or
 - ❖ Any person who, with intent to deceive, gives to any member of a registered trade union or to any person intending or applying to become a member of such trade union any document purporting to be a copy of the rules of the trade union or of any

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alterations to the same which he/she knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the like intent, gives a copy of any rules of an unregistered trade union to any person on the pretence that such rules are the rules of a registered trade union.

9. Any registered trade union may, with the consent of not less than two-thirds of the total number of its members and subject to the provisions of the Act, change its name. The change in the name of a registered trade union shall not effect any of its rights or obligation or render defective any legal proceeding by or against the union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued by its new name.
10. Any two or more registered trade unions may become amalgamated together as one trade union with or without the dissolution or division of the funds of such trade unions or any of them, provided that the votes of at least one-half of the members of each or every such trade union entitled to vote are recorded, and that at least sixty percent of the votes recorded are in favour of the proposal. Such an amalgamation shall not prejudice any right of any such unions or any right of a creditor or any of them.
11. When a registered trade union is dissolved, notice for the dissolution signed by seven members and by the Secretary of the trade union shall, within fourteen days of the dissolution, be sent to the Registrar and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the trade union, and the dissolution shall have effect from the date of such registration.

10.1.3 Features of Trade Unions Act

The Trade Unions Act 1926 has been amended from time to time and the most important being the Trade Unions (Amendment) Act, 2001. This Act has been enacted in order to bring more transparency and to provide greater support to trade unionism in India. Some of the salient features of the Trade Unions (Amendment) Act, 2001 are:-

1. No trade union of workmen shall be registered unless at least 10% or 100, whichever is less, subject to a minimum of 7 workmen engaged or employed in the establishment or industry with which it is connected are the members of such trade union on the date of making of application for registration.
2. A registered trade union of workmen shall at all times continue to have not less than 10% or 100 of the workmen, whichever is less, subject to a minimum of 7 persons engaged or employed in the establishment or industry with which it is connected, as its members.
3. A provision for filing an appeal before the Industrial Tribunal/Labour Court in case of non-registration or for restoration of registration has been provided.
4. All office bearers of a registered trade union, except not more than one-third of the total number of office bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the trade union is connected.
5. Minimum rate of subscription by members of the trade union is fixed at one rupee per annum for rural workers, three rupees per annum for workers in other unorganised sectors and 12 rupees per annum in all other cases.
6. The employees who have been retired or have been retrenched shall not be construed as outsiders for the purpose of holding an office in the trade union concerned.
7. For the promotion of civic and political interest of its members, unions are authorized to set up separate political funds.

Hence, trade union legislation ensures their orderly growth, reduce their multiplicity and promote internal democracy in the industrial organisation and the economy. The trade unions have thus acquired an important place in the economic, political and social set up of the country.

10.1.4 Scope and Coverage

The expression "Trade Union" under the Act includes both employers and workers organizations. Employers organisations also can be registered as trade unions. The intention is to place both on par in matters of rights and responsibilities. It is primarily the objective of an association or combination which determines whether it is a trade union or not.

The federation of two or more trade unions mentioned in the definition can be seen in shape of Industrial Federations of Trade Unions.

Bombay Industrial Relations Act, 1948 is the most important state enactment. The relevant features of the Act are (a) compulsory recognition of union by employer, (b) giving the right to workers to get their case represented either through representative union or where there is no representative union in industry/centre/unit through elected representative of workers or through Government labour officer.

There is no provision in the Trade Unions Act, 1926 about sorting out inter or intra trade union disputes. In such eventuality, aggrieved party has to take recourse to common law of the land and redressal through courts.

This Act extends to the whole of India. Under the Act, the term "Trade Union" is defined as any combination whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers, or between workmen and workmen, or between employer and employers, or for imposing restrictive conditions on the conduct of any trade of business, and includes any federation of two or more trade unions. In other words, a trade union is a combination or association of not only of workmen but also of the employers. The Act, therefore, applies not only to the unions of workers but also to the associations of employers. (Sec. 2H)



Caselet

IG Metall - A Trade Union in Crisis?

On April 24, 2006, an agreement was reached between IG Metall Trade Union (IG Metall, also known as Industrie Gewerkschaft Metall or German Metalworker's Union), one of the oldest and largest trade unions in Germany and Gesamtmetall National Employers' Group (Gesamtmetall) on the wage increase for the union's 3.4 million members. Under the agreement, which was valid for 13 months, its members would receive a wage hike of three percent from June 2006 and a one time payment of 310 Euros as bonus for the months of March, April, and May 2006. This agreement avoided a series of nationwide strikes that IG Metall had planned to hold in Germany.

After the agreement, Gesamtmetall members threatened to cut jobs or move them out of Germany. They said that the agreement would increase labor costs and make exports less competitive.

It was estimated that an IG Metall worker in Germany made on an average about 25 Euros an hour when compared to 6 Euros per hour earned by a worker in East European countries. The employers also warned that this wage increase could threaten the recovery of the fragile German economy. They felt that the agreement would worsen the unemployment situation in Germany. Anton Boerner, head of one of the employer's federation wrote,

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“It’s going to be very, very difficult for employment in Germany. Three percent is simply too much.” The agreement was of great significance to the German economy, the biggest economy in Europe, as it set the agenda for other trade unions in Germany in terms of collective bargaining.

In Germany, most negotiations for collective bargaining and other agreements are negotiated between the trade unions and regional employer associations representing the entire sector rather than with individual companies.

Earlier in January 2006, IG Metall had demanded a five percent increase in pay as it felt that these companies were making huge profits. It said that the increase in pay would help the members cope with the rising cost of living, increase their purchasing power, and to withstand the increase in valued added tax from 16 percent to 19 percent, which the German government proposed to implement in 2007.

The agreement would also influence inflation and price stability in the German economy, and have repercussions on the wider European economy. Earlier, the European Central Bank (ECB) president, Jean-Claude Trichet, warned German companies against allowing any pay increase. He said that if the pay demand was met, the ECB would be forced to raise interest rates to counter inflation.

Controversy is not new to IG Metall. Over the decades, the union has played an important role in German labor relations and is considered by many as the pioneer in collective bargaining in Germany. IG Metall has both blue and white collared workers as its members. Though it is primarily a metalworkers’ union and represents the metal industry labor, it has members from other industry sectors as well. Over the years, IG Metall has made significant contributions to the evolution of industrial relations in Germany. But, it has also been accused of irrational protection and harming the interests of workers and employees. The achievements and accusations present a contrasting and interesting picture of a trade union in a changing business environment.

Source: <http://www.icmrindia.org/casestudies/catalogue/Human%20Resource%20and%20Organization%20Behavior/IG%20Metall-Trade%20Union%20in%20Crisis-Human%20Resource%20Management.htm>

Self Assessment

State whether the following statements are true or false:

1. The legislation regulating these trade unions is the Indian Trade Unions Act, 1926.
2. The Act is applicable only to the union of workers.
3. The general funds of a registered trade union shall not be spent on any other objects than those specified in the Act.
4. The Trade Unions Act 1926 has been amended from time to time and the most important being 2000.

10.2 Authorities under Trade Union

The authorities of trade union are as follows:

10.2.1 All India Trade Union Congress (AITUC)

This National Federation was established in 1921. Ideologically it is linked with the communist philosophy and therefore espouses a more radical approach, as compared to some of the other federations, in attaining the workers’ interests and goals. The major objectives of AITUC are:

- (a) To establish a socialist state in India and the nationalisation of the means of production, distribution and exchanges as far as possible.
- (b) To improve the economic and social conditions of the working class, by securing better terms and conditions of employment.
- (c) To safeguard and promote the workers' right to free speech, freedom of association and assembly and the right to strike.



Example: For the furtherance of these objectives the means to be adopted by AITUC are to be legitimate, peaceful and democratic, viz, legislation, education, mass meeting, negotiations, demonstrations and as a last resort, the staging of a strike.



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Membership and Finance

The sources of funds are:

1. An annual contribution of ₹ 15 for unions with 500 members and less;
2. Affiliation fees at the rate of 5 paise per member with a minimum of ₹ 20 for unions with a membership above 500;
3. A delegate fee of ₹ 12 per delegate; and
4. Any other levy which may be fixed by a two-thirds majority of the General Council. The levy is fixed at the rate of ₹ 5 per 1000 members.

10.2.2 Indian National Trade Union Congress (INTUC)

This union was organised in 1947 with active support and encouragement from Congress leaders. It wanted to bring about a peaceful and non-violent solution to industrial disputes. It seeks to establish a society in which there is an opportunity for the development of individuals and the eradication of anti-social concentration of power in any form and therefore to nationalise industry. The main objectives are:

- (a) To ensure full employment.
- (b) To secure greater participation of workers in the management of enterprises.
- (c) To secure complete organisation of all categories of workers including agricultural labour.
- (d) Organise workers on an industry-wise basis.
- (e) To improve the conditions at work and to provide various social security measures.
- (f) To develop among the workers a sense of responsibility towards industry and the community.



Caution The means to be adopted for the furtherance of these objectives are to be peaceful through due process of law and negotiations.

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Membership and Finance

Any organisation of workers accepting the constitution of the INTUC and with a subscription rate of not less than 25 paise per month is entitled to affiliation with the INTUC provided it is not affiliated with any rival organisation or any of its executive committee members are not members of a rival union. All the unions affiliated to INTUC and belonging to the same industry are required to join the corresponding industrial federation, e.g., the Indian National Textile Workers Federation, the National Federation of Indian Railwaymen, etc.

Every affiliated organisation is required to pay the Congress an annual affiliation fee at the rate of 10 paise per member on its rolls subject to a minimum of ₹ 15.

10.2.3 Hind Mazdoor Sabha (HMS)

This national federation came into being in 1948. This federation espouses the socialist philosophy and has linkages with socialist parties. However, there has been a division within the socialist ranks with the emergence of the Hind Mazdoor Panchayat, another federation with socialist leanings. The main aims of the Hind Mazdoor Sabha are:

- (a) To promote the economic, political and social interests of the workers and to improve their terms and conditions of employment.
- (b) To form a federation of unions from the same industry or occupation at the national level.
- (c) To promote the formation of cooperative societies and to foster workers education.

The methods employed shall be legitimate, peaceful and democratic.



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Membership and Finance

The membership of HMS is open to all bonafide trade unions, including federations of trade unions. The general council of the Sabha has authority to accept or reject any application. The collection of funds of HMS is carried out through:

1. Affiliation fees of 5 paise per member per annum subject to a minimum of ₹ 20.
2. A delegate fee of ₹ 3 per delegate.
3. Any other levy that may be fixed by the general council.

10.2.4 Centre of Indian Trade Unions (CITU)

This is a national federation which was established in 1971 as a result of the split in the AITUC which was a sequel to the split in the CPI, a new centre; the Centre of Indian Trade Unions (CITU) emerged owing to its allegiance to the CPI (M). It is animated by the goal of organising workers to further their interests in economic, social and political matters. To further its objectives the methods to be adopted by CITU are legislation, demonstrations, agitations and intensification of the class struggle.



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Membership and Finance

Any union can be affiliated to CITU by paying a subscription (affiliation fee) of 20 paise per year per member (minimum of ₹ 40 per union if it is small). Each union applies to the State committee which after scrutinising, recommends its acceptance to the central committee.

The funds of CITU are derived from:

1. The affiliation fees of 20 paise per member per year to a minimum of ₹ 40.
2. The delegate fee of ₹ 5 per delegate.
3. Any other levy that may be fixed by the general council.

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Self Assessment

Fill in the blanks:

5. is linked with the communist philosophy and therefore espouses a more radical approach, as compared to some of the other federations, in attaining the workers' interests and goals.
6. union was organised in 1947 with active support and encouragement from Congress leaders.
7. federation espouses the socialist philosophy and has linkages with socialist parties.
8. is a national federation which was established in 1971 as a result of the split in the AITUC which was a sequel to the split in the CPI.

10.3 Registration of Trade Union

Following perspectives included in the Registration of Trade Union:

10.3.1 Appointment of Registrars

Under Section 3, the appropriate Government shall appoint a person to be the Registrar of Trade Unions for each State. The appropriate Government may appoint as many Additional and Deputy Registrars of Trade Unions as it thinks fit. The appropriate Government may appoint as many Additional and Deputy Registrars of Trade Unions as it thinks fit for the purpose of exercising and discharging, under the superintendence and direction of the Registrar, such powers and functions of the Registrar under this Act as it may, by order, specify and define the local limits within which any such Additional or Deputy Registrar shall exercise and discharge the powers and functions so specified.

Subject to the provisions of any order under sub-section (2), where an Additional or Deputy Registrar exercises and discharges the powers and functions of a Registrar in an area within which the registered office of a Trade Union is situated, the Additional or Deputy Registrar shall be deemed to be the Registrar in relation to the Trade Union for the purposes of this Act.

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Powers of Registrar

The Registrar has power to enquire about the legality of the new election of the office-bearers of a Trade Union; Mohan Lal v. Registrar of Trade Unions, 1983 Lab IC 1883.

10.3.2 Mode of Registration

Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act:

Provided that no Trade Union of workmen shall be registered unless at least ten per cent or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making application for registration:

Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

Where an application has been made under sub-section (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the applications.

10.3.3 Application for Registration

Every application for registration of a Trade Union shall be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely: –

- (a) the names, occupations and address of the members making application;
- (aa) in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;
- (b) the name of the Trade Union and the address of its head office; and
- (c) the titles, names, ages, addresses and occupations of the office-bearers of the Trade Union.

Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

10.3.4 Registration

The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

Comments**Notes**

The duties of the Registrar were to examine the application and to look at the objects for which the Union was formed. If those objects were objects set out in the Act, and if those objects did not go outside the objects prescribed in the Act and if all the requirements of the Act and the regulations made thereunder had been complied with, it was his duty, to register the Union; *Inland Steam Navigation Workers Union (in re:)*, 1936 IC 378.

Powers of Registrar

No provision of law provides for holding of election under the supervision of Registrar, Trade Unions. Therefore, the petitioner is right in submitting that there is no legal authority for issuance of impugned orders under which the internal disputes were referred for adjudication by the independent Board and upon its recommendations, election is directed to be held under the supervision of Registrar of Trade Unions; *Tata Workers Union v. State of Jharkhand*, 2002 LLR 806 (Jhar HC).

Question of fact or law

The Registrar is not a quasi-judicial authority and cannot, therefore, decide any disputed question of fact or law; *O.N.G.C. Workmen's Association v. State of West Bengal*, (1988) 57 FLR 522 (Cal).

Scope

Provisions of this section relate to only registration of a trade union. It is only a Civil Court which has jurisdiction to decide that dispute since under the Trade Unions Act, there is no provision permitting or empowering the Registrar to refer internal disputes relating to office-bearer for adjudication to any other forum; *R.N. Singh v. State of Bihar*, 1998 LLR 645.

10.3.5 Certificate of Registration

The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act. The registration gives a stamp of due formation of the Trade Union and assures the mind of the employer that the Trade Union is an authenticated body. The names and occupation of whose office-bearers also become known; *Food Corporation of India Staff Union v. Food Corporation of India*, 1995 LLR 309 (SC) 3 JJ.

10.3.6 Cancellation of Registration

The Registrar can withdraw or cancel registration if it has been obtained by fraud or mistake, or the trade union has ceased to exist, or it has contravened any provision of the Act, or has deleted any rule providing any matter required under this Act. The trade union concerned has, however, to be given two months' previous notice specifying the reasons for withdrawal or cancellation of registration. The union can appeal in a Civil, Court against the order of the Registrar either for refusing registration or withdrawing or cancelling registration certificate. (Secs. 10, 11)

10.3.7 Appeal

Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal –

- (a) where the head office of the Trade Union is situated within the limits of a Presidency town to the High Court, or
- (aa) where the head office is situated in an area, falling within the jurisdiction of a Labour Court or an Industrial Tribunal, to that Court or Tribunal, as the case may be;

Notes

- (b) where the head office is situated in any area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the appropriate Government may appoint in this behalf for that area.

The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order or withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

For the purpose of an appeal under sub-section (1) an appellate Court shall, so far as may be, follow the same procedure and have the same power as it follows and has when trying a suit under the Code of Civil Procedure (5 of 1908), and may direct by whom the whole or any part of the costs of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in a suit under the said Code.

In the event of the dismissal of an appeal by any Court appointed under clause (b) of sub-section (1) the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose of such appeal, have all the powers of an appellate Court under sub-sections (2) and (3), and the provisions of those sub-sections shall apply accordingly.

10.3.8 Obligations of Registered Trade Unions

Registration makes it obligatory for a trade union to:

- (i) allow any person of the age of 15 years and above to be a member of the union' subject to any rules of the trade union to the contrary, and enjoy all the privileges attached to membership; (Sec. 21)
- (ii) have 50% of the office bearers of the union from among the persons actually engaged or employed in industry with which the trade union is concerned, and the remaining 50% can be outsiders; say lawyers, politicians, social workers and others who are not in any way connected with the industry/undertaking, of which the workers are members of the union. A person is disqualified to be a member of the executive or any other office-bearer of registered trade union if he has not attained the age of 18 years, or if he has been convicted of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release; (Secs. 21A, 22)
- (iii) keep account books and membership register available for inspection by any member or officer of the union; (Sec. 20)
- (iv) send to the Registrar on or before the prescribed date an annual statement of receipts and assets and liabilities of the union audited in the prescribed manner as on 31st December, together with the statement showing changes in the office bearers and rules of the union made during the year. (Sec. 28)

10.3.9 Rights of Registered Trade Unions

A Registered Trade Union has the right to:

- (i) spend the general fund for payment of salaries, 'allowances and expenses to its office-bearers, prosecution or defense of any legal proceedings for securing or protecting any rights of trade union, conduct of trade disputes, compensation to members for any loss arising from trade disputes, provision of educational, social, or religious benefits for members, publication of periodicals on labour matters, issue of or undertaking of liability under policies of assurance on the lives of members or policies of members against sickness,

accident or unemployment, contribution to any cause intended to benefit workmen in general upto 25% of the gross income accrued to the fund, and any other object notified by the appropriate Government; (Sec. 15)

- (ii) constitute a separate political fund for the promotion of civic and political interests of members contribution to this fund is, however, not obligatory for the members, or a condition for becoming member of the union. The political fund can be used for setting up candidates and meeting their election expenses, holding elections and political meetings and maintenance of members elected to the Parliament or State Assembly or any local authority; (Sec. 16)
- (iii) claim protection from being prosecuted under sub-section (2) of Sec. 120B of the Indian Penal Code for bona fide trade union activities under Sec. 17 of the Act. The protection provided to the members and office-bearers of the Trade Union is partial in the sense that the immunity is available only in respect of agreements made between the members for the purpose of furthering any legitimate objective of the trade union as provided under section 15 of the Act. If the agreement is the agreement to do an act which is an offence, no immunity can be claimed in certain cases; (Sec. 17, 18)
- (iv) Sec. 18 of the Trade Union Act deals with immunity from Civil Proceedings. A person is liable in torts for deliberately bringing out a breach of contract of employment between the employer and employee. But a registered trade union, its members or office-bearers are protected from being sued for inducing a person to break his contract of employment or for interfering with the trade, business or employment of some other person provided such inducement is in contemplation or furtherance of trade disputes.
- (v) change its name with the consent of two-third of the total number of its members under intimation to the Registrar of Trade Unions. The change takes effect from the date it is registered by the Registrar; (Secs. 23, 25) and
- (vi) amalgamate the union with any other union by recording votes of at least 50% of the members, of which 60% must be in favour of amalgamation. This must be intimated to the Registrar, as it can, take effect after he registers it. (Sec 24,25)



Task

Critically analyse the rights of registered trade unions.

Self Assessment

State whether the following statements are true or false:

9. Under Section 3, the Appropriate Government shall appoint a person to be the Registrar of Trade Unions for each State.
10. Every application for registration of a Trade Union shall not be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union.
11. The duties of the Registrar were to examine the application and to look at the objects for which the Union was formed.
12. The Registrar is a quasi-judicial authority and cannot, therefore, decide any disputed question of fact or law.

10.4 Amalgamation, Dissolution and Penalties in Trade Union

Following perspective explain the Amalgamation and Dissolution of Trade Union:

10.4.1 Amalgamation of Trade Union

Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty per cent. of the votes recorded are in favour of the proposal.



Did u know? On merger the Trade Union and its office-bearers do not lose their identity; Rattan Kumar Dey v. Union of India, (1991) 63 FLR 463 (Gau).

10.4.2 Dissolution of Trade Union

When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution be sent to the Registrar, and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the Trade Union, and the dissolution shall have effect from the date of such registration.

Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

10.4.3 Penalties in Trade Union

The Act provides penalty of fine upto ₹ 500 for making any wilful false entry in or any omission from the general statement to be submitted to the Registrar, and upto ₹ 200 for giving incorrect copy of the rule or any other document with the intent to deceive a member or a person intending to be a member. If any registered trade union defaults in giving any notice or sending any statement or other document as required under this Act, every officer or other person bound by the rules of the trade union to give or send the same, or, if, there is no such officer or person, every member of the executive of the trade union, is punishable with a fine upto ₹ 5. If this default continues, an additional fine upto ₹ 5 for each week after the first week during which the default continues, may be imposed subject to an aggregate fine of ₹ 50. (Sec. 31, 32)

Self Assessment

Fill in the blanks:

13. Any two or more registered Trade Unions may become together as one Trade Union with or without dissolution or division of the funds of such Trade Unions.
14. Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of of the Trade Union on dissolution.
15. The Act provides penalty of fine upto for making any wilful false entry.
16. If this default continues, an additional fine upto for each week after the first week during which the default continues, may be imposed subject to an aggregate fine of ₹ 50.



Case Study **Philips India - Labor Problems at Salt Lake**

The 16th day of March 1999 brought with it a shock for the management of Philips India Limited (PIL). A judgement of the Kolkata High Court restrained the company from giving effect to the resolution it had passed in the extraordinary general meeting (EGM) held in December 1998. The resolution was to seek the shareholders' permission to sell the color television (CTV) factory to Kitchen Appliances Limited, a subsidiary of Videocon. The judgement came after a long drawn, bitter battle between the company and its two unions Philips Employees Union (PEU) and the Pieco Workers' Union (PWU) over the factory's sale.

PEU president Kiron Mehta said, "The company's top management should now see reason. Ours is a good factory and the sale price agreed upon should be reasonable. Further how come some other company is willing to take over and hopes to run the company profitably when our own management has thrown its hands up after investing ₹ 70 crores on the plant." Philips sources on the other hand refused to accept defeat. The company immediately revealed its plans to take further legal action and complete the sale at any cost.

PIL's operations dates back to 1930, when Philips Electricals Co. (India) Ltd., a subsidiary of Holland based Philips NV was established. The company's name was changed to Philips India Pvt. Ltd. in September 1956 and it was converted into a public limited company in October 1957. After being initially involved only in trading, PIL set up manufacturing facilities in several product lines. PIL commenced lamp manufacturing in 1938 in Kolkata and followed it up by establishing a radio manufacturing factory in 1948. An electronics components unit was set up in Loni, near Pune, in 1959.

In 1963, the Kalwa factory in Maharashtra began to produce electronics measuring equipment. The company subsequently started manufacturing telecommunication equipment in Kolkata.

In the mid-1990s, Philips decided to follow Philips NV's worldwide strategy of having a common manufacturing and integrated technology to reduce costs. The company planned to set up an integrated consumer electronics facility having common manufacturing technology as well as suppliers base. Director Ramachandran stated that the company had plans to depend on outsourcing rather than having its own manufacturing base in the future. The company selected Pune as its manufacturing base and decided to get the Salt Lake factory off its hands.

In tune with this decision, the employees were appraised and severance packages were declared. Out of 750 workers in the Salt Lake division, 391 workers opted for VRS. PIL then appointed Hong Kong and Shanghai Banking Corporation (HSBC) to scout for buyers for the factory. Videocon was one of the companies approached.

Though initially Videocon seemed to be interested, it expressed reservations about buying an over staffed and under utilized plant. To make it an attractive buy, PIL reduced the workforce and modernised the unit, spending ₹ 7.1 crore in the process.

In September 1998, Videocon agreed to buy the factory through its nominee, Kitchen Appliances India Ltd. The total value of the plant was ascertained to be ₹ 28 crore and Videocon agreed to pay ₹ 9 crore in addition to taking up the liability of ₹ 21 crore. Videocon agreed to take over the plant along with the employees as a going concern along with the liabilities of VRS, provident fund etc. The factory was to continue as a manufacturing center securing a fair value to its shareholders and employees.

Contd...

Notes

In December 2000, the Supreme Court finally passed judgement on the controversial Philips case. It was in favour of the PIL. The judgement dismissed the review petition filed by the workers as a last ditch effort. The judge said that though the workers can demand for their rights, they had no say in any of the policy decisions of the company, if their interests were not adversely affected.

Question

Critically analyse the above case.

Source: <http://www.icmrindia.org/casestudies/catalogue/Human%20Resource%20and%20Organization%20Behavior/Philips%20India-Labor%20Problems-Salt%20Lake-HROB%20Case%20Study.htm>

10.5 Summary

- Trade union is an indispensable part of industrial sector in India.
- In fact Trade Unions Act as an effective platform for the workers class to enjoy their due rights without being exploited. To strengthen the fundamental rights of voiceless working class trade unions are originated.
- Gradually trade union got recognition from the authority and became a legally approved representation of labor mass.
- In India various trade union related Acts and regulations are enacted to empower the working classes.
- Indian Trade Union Act 1926 is a principal act that provides adequate safeguards to the rights of labor masses.
- The Trade Unions Act, 1926 is a fountain head Act in India that provides varied rules and regulation related to trade unions.
- It has underlined wide range of provisions for the benefit of labor mass. This Act states all modalities related to trade union registration to trade dispute resolution.
- The Trade Unions Act, 1926 has defined the role of trade unions and also set certain controlling mechanisms and its main aims and objectives of this Act emphasizes on the reciprocal relationship between the employers and employees.
- Trade dispute can be defined as, any disputes that arises in between, employers and workmen, workmen and workmen or employers and employers, in connection of employment or non-employment or the terms of employment or the conditions of labour, of any person.
- Any seven or more members of a Trade Union may be subscribing their names to the rules of the Trade Union complying with the provisions of this Act with respect to registration, apply for its registration.
- Unless the agreement is an agreement to commit an offence as under section 15, no officers or members of a registered Trade Union shall be liable to punishment under sub-section (2) of Section 120B of the Indian Penal Code.
- In the present shape, the Trade Unions Act, 1926 does not serve the purpose and requires immediate amendment to make it more useful.
- The non-existence of provisions on Recognition of Trade Unions makes the Collective Bargaining processes absolutely difficult and industry faces acute difficulties in shape of inter-union rivalry and multiplicity of trade unions, having no or negligible following.

10.6 Keywords

Amalgamation: The combination of one or more companies into a new entity.

Authorities: Institutionalized and legal power inherent in a particular job, function, or position that is meant to enable its holder to successfully carry out his or her responsibilities.

Commissioner: Commissioner is in principle the title given to a member of a commission or to an individual who has been given a commission.

Dissolution: The closing down or dismissal of an assembly, partnership, or official body.

Industrial Relations: Industrial relations are the relationships between employees and employers within the organizational settings.

Intervention: An intervention is a deliberate process by which change is introduced into peoples' thoughts, feelings and behaviors.

Penalty: A punishment imposed for breaking a law, rule, or contract.

Registration: Entering certain information in a register, such as about invoices or mail delivered or received.

Statutory: Established, regulated or imposed by or in conformity with laws passed by a legislative body.

Trade Union: Trade union is a voluntary organization of workers pertaining to a particular trade, industry or a company and formed to promote and protect their interests and welfare by collective action.

Workmen: A man employed to do manual labor.

10.7 Review Questions

1. Define Trade union.
2. What are the objectives of Trade Union?
3. Highlight the basic provisions of Trade Union.
4. Discuss the features of Trade Union Act.
5. Describe the Scope and Coverage of Trade Union Act.
6. Write brief note on All India Trade Union Congress (AITUC).
7. Throw some light on the 2 Mode of Registration of Trade Union.
8. Discuss Appeal in Trade Union Act.
9. Describe Amalgamation of Trade Union.
10. What are the Penalties in Trade Union?

Answers: Self Assessment

- | | |
|----------|----------|
| 1. True | 2. False |
| 3. True | 4. False |
| 5. AITUC | 6. INTUC |
| 7. HMS | 8. CITU |

Notes

- | | |
|-----------------|-----------|
| 9. True | 10. False |
| 11. True | 12. False |
| 13. Amalgamated | 14. Funds |
| 15. ₹ 500 | 16. ₹ 5 |

10.8 Further Readings



Books

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Unit 11: Employees' Provident Fund Act, 1952

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Objectives

After studying this unit, you will be able to:

- Explain the genesis of the Act
- Discuss the definitions under this Act
- Get an overview of the Employees' Pension Scheme, 1995
- Describe the Employees' Provident Fund Scheme, 1952
- Discuss the Employees' Deposit-Linked Insurance Scheme, 1976
- Get an overview of determination and recovery of money due to employer
- Explain the penalties under this Act

Introduction

As per Preamble to the Act, the EPF Act is enacted to provide for the institution of provident funds, pension fund and deposit linked insurance fund for employees in factories and other establishments. The Employees' Provident Funds and Miscellaneous Provisions Act is a social security legislation to provide for provident fund, family pension and insurance to employees. Employee has to pay contribution towards the fund. Employer also pays equal contribution. The employee gets a lump sum amount when he retires, which will be useful to him after retirement. The Act covers three schemes i.e. PF (Provident Fund scheme), FPF (Family Pension Fund scheme) and EDLI (Employees Deposit Linked Insurance scheme). The EPF Act contains basic provisions in respect of applicability, eligibility, damages, appeals, recovery etc. The three schemes formed by Central Government under the Act make provisions in respect of those schemes. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding various schemes included in EPF Act.

11.1 Genesis of the Act

In the previous unit, we dealt with the Trade Union Act. Legislation for compulsory institution of contributory provident fund in industrial undertakings was discussed several times at tripartite meetings in which representatives of the Central and State governments and of employers and workers took part. A large measure of agreement was reached on the need for such legislation. A non-official Bill on this subject was introduced in the Lok Sabha in 1948 to provide for the establishment and grant of provident fund to certain classes of workers by their employers. The Bill was withdrawn only on an assurance by the government that it would soon consider the introduction of a comprehensive bill. There was also a persistent demo that the Central Government extend the benefits of Coal Mines Provident Fund Scheme to workers employed in other industries. The view that the proposed legislation should be undertaken was largely endorsed by the Conference of Provincial Labour Ministers' held in January 1951. On 15th November 1951, the Government of India promulgated the Employees' Provident Funds Ordinance which came into force on that date. It was subsequently replaced by the Employees' Provident Funds Act passed on 4th March 1952.

11.1.1 Object of the Act

The Act was passed with a view to making some provision for the future of the industrial worker after his retirement or for his dependants in case of his early death and inculcating the habit of saving among the workers. The object of the Act is to provide substantial 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.

The Act provides for a scheme for the institution of provident fund for specified classes of employees. Accordingly, the Employees' Provident Fund Scheme was framed under Section 5 of the Act, which came into force on 1st November 1952.



Caution On a review of the working of the scheme over the years, it was found that provident fund was no doubt an effective old age and survivorship benefit; but in the event of the premature death of an employee, the accumulations in the fund were not adequate enough to render long-term financial protection to his family.

This lacuna led to the introduction of the Employees' Family Pension Scheme with effect from 1st March 1971.



Did u know? The Act was further amended in 1976 with a view to introducing Employees' Deposit Linked Insurance Scheme, a measure to provide an insurance cover to the members of the provident fund in covered establishments without the payment of any premium by these members. Thus; three schemes have been framed under the Employees' Provident Funds and Miscellaneous Provisions Act.

11.1.2 Applicability of the Act

The Employees' Provident Funds Act, 1952 is applicable from the date of functioning or date of set-up of establishments provided the factory/establishment employed twenty or more persons. The Act, however, does not apply to co-operative societies employing less than 50 persons and working without the aid of power. The Central Government is empowered to apply the provisions of this Act to any establishments employing less than 20 persons after giving not less than two months' notice of its intention to do so by a notification in the Official Gazette. Once the Act is applied, 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 the mutual consent of the Act.

11.1.3 Administration

The Employees' Provident Fund Organisation is in charge of all the three schemes. These schemes are administered by the Central Board of Trustees, a tripartite body consisting of the chairman, nominees of the central and state governments and employees' and employers' organizations. The Central Provident Fund Commissioner is the chief executive officer of the organisation and secretary to the Central Board of Trustees. He is assisted by the Regional Provident Fund Commissioner, one in each state and in Delhi.



Example: The regional communities advise the Central Board on matters connected with the administration of the scheme in their respective States. Sub-regional provident fund offices have been opened in some region's to render better services to the subscribers of the fund.

Provident fund inspectors are appointed to carry out inspections and to perform an advisory role vis-a-vis the employers and workers in different covered establishments. They conduct surveys to ensure that all coverable establishment/factories are covered under the Act. They also recommend and file prosecutions in the courts against defaulting employers and pursue these cases till their final disposal.

Notes



Caselet

The Bharatkhand Textile Mfg. Co. vs The Textile Labour on 17 March, 1960

This was an appeal by certain textile mills of Ahmedabad against a scheme for gratuity awarded by the Industrial Court. The Labour Association, the respondent, gave a notice of change under s. 42(2) of the Bombay Industrial Relations Act, 1946 (Bom. XI of 1947), intimating the Mill Owners' Association that they wanted a scheme for gratuity and mentioned four categories of termination of service in the annexure. This demand was refused and so referred to the Industrial Court under s. 73A of the Act. Pending the reference the Employees' Provident Funds Act, 1952 (19 of 1952), came into operation and the Industrial Court, on an objection by the Mill Owners' Association, held that it was inadvisable to proceed with the reference and that a fresh application should be made, if necessary, after the scheme envisaged by the Act is introduced.

A scheme for gratuity is by its nature an integrated scheme and covers all classes of termination of service where gratuity benefit can be legitimately claimed and the refusal of the Industrial Court in the earlier award amounted to a refusal to frame any scheme at all. The statutory provident fund created by the Employees' Provident Funds Act, 1952, could be no bar to the respondent's claim for a gratuity scheme although there can be no doubt that in awarding such a scheme Industrial Courts must make due allowance for it. Provisions of s. 17 of the said Act clearly indicate that the statutory benefits under the Act are the minimum to which the employees are entitled and that they are no bar to additional benefits claimed by the employees. *Indian Hume Pipe Co. Ltd. v. Their Workmen*, [1960] 2 S.C.R. 32, referred to. It was not correct to say that the claim for gratuity was essentially similar to a claim for profit bonus and must always be considered on unit wise basis.

The benefit of gratuity is in the nature of a retriability thus made was not accepted by the Association, and so it was referred to the Industrial Court. Pending the reference the Employees' Provident Funds Act, 1952 (19 of 1952), came into operation on March 4, 1952, and it was urged before the Industrial Court on behalf of the Association that since the statutory scheme of provident fund would soon become compulsory it would not be advisable to adjudicate upon the respondent's claim for the specified items of gratuity at that stage. This argument was accepted by the Industrial Court; it held that when the scheme envisaged by the new Act is introduced it would be possible to see from what date it would be operative, and that, if after the introduction of the said scheme it be found that a sufficient margin is left, it would then be open to the respondent and the Association to make a fresh application for the institution of a gratuity fund either for all the employees or for the benefit of such of them as will have to retire within the next few years. It was on this ground that the demand made by the respondent was rejected on April.

The Act has been passed by the Bombay Legislature because it thought that "it was expedient to provide for the regulation of the relations of employers and employees in certain matters, to consolidate and amend the law relating to the settlement of industrial disputes and to provide for certain other purposes" With this object the Act has made elaborate provisions for the regulation of industrial relationships and for the speedy disposal of industrial disputes. An "industrial dispute" under s. 3, sub-s. (17), means "any dispute or difference between an employer and employee, or between employers and employees, or between employees and employees and which is connected with any industrial matter". The expression "industrial matter" has been inclusively defined in a very wide sense approved Union" in s. 3(2) means "a union on the approved list" "primary union" under s. 3(28) means "a union for the time being registered as a primary union

Contd...

under the Act registered union" under s. 3(30) means "a union registered under the Act", while "representative union" under s. 3(33) means "a union for the time being registered as a representative union under the Act."

Notes

Source: <http://www.indiankanon.org/docfragment/1936107/?formInput=employees%20provident%20fund%20act%201952%20doctype%3A%20supremecourt>

Self Assessment

State whether the following statements are true or false:

1. A non-official Bill on this subject was introduced in the Lok Sabha in 1950 to provide for the establishment and grant of provident fund to certain classes of workers by their employers.
2. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with the mutual consent of the Act.
3. The Employees' Provident Fund Organisation is in charge of all the four schemes.

11.2 Definitions

In this Scheme, unless the context otherwise requires:—

- (1) **Employees' Pension Fund:** "Pension Fund" means the Employees Pension Fund established under sub-section (2) of section 6A.
- (2) **Employee Pension Scheme:** "Pension Scheme" means the Employees Pension Scheme framed under sub-section (1) of section 6A.
- (3) **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.
- (4) **Industry:** "Industry" means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4;
 - (ia) "Insurance Fund" means the Deposit-linked Insurance Scheme framed under sub-section (2) of section 6C;
 - (ib) "Insurance Scheme" means the Employees' Deposit-linked Insurance Scheme framed under sub-section (1) of section 6C.
- (5) **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 the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment;
 - ◆ "exempted employee" 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;
 - ◆ "exempted establishment" 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;

Notes

Self Assessment

Fill in the blanks:

4. means the Deposit-linked Insurance Scheme framed under sub-section (2) of section 6C.
5. 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.
6. means the Employees Pension Fund established under sub-section (2) of section 6A.

11.3 The Employees' Pension Scheme, 1995

Employees' Pension Scheme 1995 has been made applicable on 16.11.1995 retrospectively with effect from 1.4.1993. This new Scheme replaces the erstwhile Family Pension Scheme, 1971.

11.3.1 Membership

1. Every member of the Employees' Provident Scheme 1952 and opted for Employees Family Pension Scheme 1971.
2. All new entrants to the Employees' Provident Fund Scheme 1952 will become member of the Employees' Pension Scheme 1995 on compulsory basis.
3. Every employee who has ceased to be a member of the Employees Family Pension Scheme 1971 during 1.4.1993 and 15.11.1995 was given option to become member of the Employees' Pension Scheme 1995 upto 31.3.1998.
4. Every existing member of the Employees' Provident Fund Scheme 1952 not being member of Family Pension Scheme 1971 has option to become member of Employees' Pension Scheme, 1995.

11.3.2 Option Requirement

1. Members who have died during 1.4.1993 and 15.11.1995 shall be deemed to have exercised option of joining Employees' Pension Scheme 1995 with effect from the date of death:
2. Members who are alive may exercise option to become member of the Employees' Pension Scheme 1995 on the date of exit from the employment by depositing amount along with interest at the rate of 8.5 per cent per annum from the date of such withdrawal.
3. Members will have option to join Employees' Pension Scheme 1995 by depositing the contribution along with up to date interest under ceased Employees' Family Pension Scheme 1971 with effect from 1.3.1971.

11.3.3 Contribution

Employee is not required to contribute separately under the Employees' Pension Scheme 1995. Employer share of provident fund contribution at the rate of 8.33 % is diverted to pension fund every month.

11.3.4 Service for Pension

Notes

Actual service rendered after 16.11.1995 together with the service for which the contribution has been made under the eased Family Pension Scheme 1971, if any will be treated as service for pension. A person is entitled for pension after, completing the age of 58 years with minimum service of 10 years. Six months or more shall be treated as one year and the service less than six months shall be ignored.

11.3.5 Determination of Pensionable Salary

Pensionable salary shall be the average monthly pay drawn in any manner including on piece rate basis during the contributory period of service in the span of 12 months preceding the date of exit from membership of the Employees Provident Fund.

11.3.6 Benefits

1. *Monthly Member Pension* - Superannuation Pension/retirement on attaining the age of 58 years.
2. *Pension Scheme Certificate* - Document indicating pensionable service and the amount of reduced pension on the date of exit from employment which shall be counted for determination of pension along with fresh service where the member has not attained the age of retirement.
3. *Invalidity Pension* - In case of permanent and total disablement during the course of employment.
4. *Widow Pension* - Pension from the date following the date of death of the, member whether in service or after exit of employment or after retirement/commencement of monthly member pension.
5. *Children Pension* - Pension to two children of deceased member up to the age of 25 years in addition to widow.
6. *Orphan Pension* - Two orphan children up to the age of 25 years entitled for monthly orphan pension equal to 75% of the amount of widow pension.
7. *Nominee Pension* - In case of unmarried members, a person nominated by the member will get pension equal to widow pension.

11.3.7 Commutation of Pension

Pension shall be allowed for commutation with effect from November 1998. Member can opt for commutation up to a maximum of one third of pension.

11.3.8 Withdrawal Benefits

A member is allowed withdrawal benefit where a minimum of pensionable service of 10 years has not been rendered on the date of exit/on attaining age of 58 years.

11.3.9 Administration

The pension scheme will be administered by the tripartite Central Board of Trustees set up under the Employees Provident Fund and Miscellaneous Provisions Act. The Regional Committees set up under the provident fund scheme shall advise the Regional Boards on matters relating to administration and implementation of the scheme in their respective regions.

Notes

Self Assessment

State whether the following statements are true or false:

7. Every member of the Employees' Provident Scheme 1952 and opted for Employees Family Pension Scheme 1971.
8. Employee is not required to contribute separately under the Employees' Pension Scheme 1996.
9. A member is allowed withdrawal benefit where a minimum of pensionable service of 10 years has not been rendered on the date of exit/on attaining age of 58 years.

11.4 The Employees' Provident Fund Scheme, 1952

The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is 10% of the pay of the employees. The term "wages" includes basic wage, dearness allowance, including cash value of food concession and retaining allowance, if any. The Act, however, provides that the Central Government may, after making such enquiries as it deems fit, enhance the statutory rate of contribution to 12% of wages in any industry or class of establishments.

The contributions received by the Provident Fund Organisation from unexempted establishments as well as by the Board of Trustees from exempted establishments shall be invested, after making payments on account of advances and final withdrawals, according to the pattern laid down by the Government of India from time to time. The exempted establishments are required to follow the same pattern of investments as is, prescribed for the unexempted establishments. The provident fund accumulations are invested in government securities, negotiable securities or bonds, 7-year national saving certificates or post office time deposits schemes, if any.

11.4.1 EPF Interest Rate

Under Para 60(1) of the Employees' Provident Fund Scheme, the Central Government, on the recommendation of the Central Board of Trustees, declares the rate of interest to be credited annually to the accounts of provident fund subscribers.

11.4.2 Withdrawals

Under the scheme, a member may withdraw the full amount standing to his credit in the fund in the event of –

1. Retirement from service after attaining the age of 55;
2. Retirement on account of permanent and total incapacity;
3. Migration from India for permanent settlement abroad; and
4. Termination of service in the course of mass retrenchment (involving 3 or more persons). The membership for this purpose is reckoned from the time of joining the covered establishment till the date of the settlement of the claim,

A member can withdraw up to 90% of the amount of provident fund at credit after attaining the age of 54 years or within one year before actual retirement on superannuation whichever is later.

The Scheme provides for non-refundable partial withdrawals/advances to meet certain contingencies

Notes

1. Financing of life insurance policies;
2. House-building;
3. Purchasing shares of consumers' co-operative credit housing societies;
4. During temporary closure of establishments;
5. Illness of member, family members;
6. Member's own marriage or for the marriage of his/her sister, brother or daughter/ son and post-matriculation education of children;
7. Damages to movable and immovable property of members due to a calamity of exceptional nature;
8. Unemployment relief to individual retrenched members;
9. Cut in supply of electricity to the factory/establishment; and
10. Grant of advance to members who are physically handicapped for the purchase of equipment.

11.4.3 Nomination

If there is no nominee, the amount shall be paid to the members of the family in equal shares except:

- Sons who have attained majority;
- Sons of a deceased son who have attained majority;
- Married daughters whose husbands are alive;
- Married daughters of a deceased son whose husbands are alive.

The nomination form shall be filled in duplicate and one copy duly accepted by the provident fund office will be kept by members. In case of change, a separate form for a fresh nomination should be filled in duplicate.

11.4.4 Transfer

When a member leaves service in one establishment and obtains re-employment in another establishment, whether exempted or unexempted, in the same region or in another region, he is required to apply for the transfer of his provident fund account to the Regional Provident Fund Commissioner in the prescribed form. The actual transfer of the provident fund accumulations with interest thereon takes place in cases of:

1. Re-employment in an establishment, whether exempted or unexempted, in another region/sub-region;
2. Re-employment in an exempted establishment in the same region/sub-region;
3. Leaving service in an exempted establishment and re-employment in an unexempted establishment;
4. Re-employment in an establishment not covered under the Act

Notes



Notes

A member of the fund is entitled to get full refund of both the shares of contributions made by him as well as by his employer with interest thereon immediately after leaving the service.

11.4.5 Account Slip

As soon as possible after the completion of each accounting year, every member of the fund shall be supplied with an account slip showing:

1. The opening balance;
2. The amount contributed during the year;
3. The amount of interest credited or debited during the year; and
4. Closing balance,

Errors, if any, should be brought to the notice of the Commissioner within six months.

11.4.6 Exemption

An establishment/factory may be granted exemption under Section 17 if, (i) in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contributions are not less favourable than those specified in Section 6 of the Act, and (ii) if the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable than the benefits provided under the Act or any scheme in relation to the employees in any other establishment of a similar character. While recommending to the appropriate government grant of exemption under this section, the Employees' Provident Fund Organisation usually takes into consideration the rate of contribution, the eligibility clause, the forfeiture clause and the rate of interest. Also, the totality of the benefits provided under the rules of the exempted funds is taken into consideration.



Example: The Central Government is empowered to grant exemption to any class of and soda security establishments from the operation of the Act for a specified period, on financial or other grounds under section 16(2).

The exemption is granted by issue of notification in the Official Gazette and subject to such terms and conditions as may be specified in the notification. The exemption does not amount to total exclusion from the provisions of the Act. The exempted establishments are required to constitute a Board of Trustees according to the rules governing the exemptions to administer the fund, subject to overall control of the Regional Provident Fund Commissioner. The exempted establishments are also required to maintain proper accounts, submit prescribed returns, invest provident fund accumulations in the manner prescribed by the central Government from time to time, and to pay inspection charges. Exemption is liable to be cancelled for breach of any of these conditions.

Self Assessment

Fill in the blanks:

10. The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is of the pay of the employees.
11. The nomination form shall be filled in duplicate and one copy duly accepted by the office will be kept by members.

12. The establishments are also required to maintain proper accounts, submit prescribed returns, invest provident fund accumulations in the manner prescribed by the central Government from time to time, and to pay inspection charges.

Notes

11.5 The Employees' Deposit-Linked Insurance Scheme, 1976

The Central Government may by notification in the Official Gazette frame a Scheme to be called the Employees' Deposit-linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Act applies. There shall be established as soon as may be after the framing of the Insurance Scheme Deposit-linked Insurance Fund into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer such amount not being more than one per cent of the aggregate of the basic wages dearness allowance and retaining allowance (if any) for the time being payable in relation to such employee as the Central Government may by notification in the Official Gazette specify.

The scheme came into force from August 1, 1976. It is applicable to all factories/establishments to which the Employees' Provident Funds Act, 1952 applies. All the provident fund member-employees, both in the exempted and unexempted establishments, are covered under this scheme. While the employees are not required to contribute to the Insurance Fund, the employers are required to pay contributions to it at the rate of 0.5% of the pay of the employers who are provident fund subscribers. The Central Government also contributes to the insurance fund at the rate of 0.25% of the pay in respect of the covered employee.



Notes

The employers are also required to pay administrative charges to the insurance fund at the rate of 0.01% of the pay drawn by the employees, subject to a minimum of ₹ 2 per month. The Central Government also meets partly the expenses in connection with the administration of the insurance scheme by paying into the insurance fund an amount, at the rate of 0.005% of the pay drawn by the employee members subject to a minimum of ₹ 1 per month. The employers of exempted establishments are required to pay inspection charges at the rate of 0.02% of the pay of the employee-members.

Under the Scheme, the nominees/members of the family of employees of covered establishments will get, in the event of death while in service, an additional amount equal to the average balance in the provident fund account of the deceased during the preceding 12 months wherever the average provident fund balance is less than ₹ 25,000. In cases where the average provident fund balance of preceding twelve months exceeds ₹ 25,000 plus 25% of the amount in excess of ₹ 25,000 subject to a maximum of ₹ 35,000.

There is provision in the scheme for the exemption of factories/establishments which have an insurance scheme approved by government and conferring more benefits than those provided under this statutory scheme, provided that a majority of the employees are in favour of such exemption. Subject to certain conditions, individual employees or class of employees may also be granted exemption. The Central Government is the appropriate authority to grant exemption from the Employees' Deposit-Linked Insurance Scheme under Section 17(2A).

The employer shall pay into the Insurance Fund such further sums of money not exceeding one-fourth of the contribution which he is required to make under sub-section(2) as the Central Government may from time to time determine to meet all the expenses in connection with administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that Scheme.

Notes



Task

If any establishment has departments or branches, are these departments or branches, to be treated as separate establishments or parts of the same establishments?

Self Assessment

State whether the following statements are true or false:

13. The scheme came into force from August 1, 1986.
14. In cases where the average provident fund balance of preceding twelve months exceeds ₹ 25,000 plus 25% of the amount in excess of ₹ 25,000 subject to a maximum of ₹ 35,000.
15. The employers of exempted establishments are required to pay inspection charges at the rate of 0.01% of the pay of the employee-members.

11.6 Determination and Recovery of Money due to Employer

Following aspects explain the determination and recovery of money due to employer:

11.6.1 Determination of Money due to Employer

The central provident fund commissioner, any additional central provident fund commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,

- (a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and
- (b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:-

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses,

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45) of 1860.

No order shall be made under sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case - Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

Where an order under sub-section (1) is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.



Notes

Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

11.6.2 Recovery of Money due to Employer and Contractor

The amount of contribution that is to say, the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.


A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee the employee's contribution under any Scheme by deduction from the basic wages, dearness allowance and retaining allowance if any payable to such employee.

Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the basic wages, dearness allowance, and retaining allowance if any payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Mode of Recovery of Money due from Employers: Any amount due -

- (a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or under sub-section (5) of section 17 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or
- (b) from the employer in relation to an exempted establishment in respect of any damages recoverable under section 14B or any charges payable by him the appropriate Government under any provision of this Act or under any of the conditions specified under section 17 or in respect of the contribution payable by him towards the Pension Scheme under the said section 17, may, if the amount is in arrear, be recovered in the manner specified in sections 8B to 8G.

Notes



Notes In this section, the expressions “dearness allowance” and “retaining allowance” shall have the same meanings as in section 6.

Self Assessment

Fill in the blanks:

16. The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry have the same powers as are vested in a court under the Code of Procedure, 1908 (5 of 1908).
17. A from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him.
18. The amount of contribution that is to say, the contribution as well as the employee’s contribution in pursuance of any Scheme and the employer’s contribution in pursuance of the Insurance Scheme.

11.7 Penalties under this Act

When an employer fails to remit the dues under the Scheme within 15 (20 days with 5 days grace period) days of the close of each month the employer will be liable, to pay penal damages as maybe determined by the Regional Commissioner (RC) not exceeding 37% of the arrears.



Did u know? Any amount outstanding from the employer can be recovered by the Regional Commissioner as an arrear of land revenue. The powers for revenue recovery and issue of recovery certificates are vested with the Regional Commissioner (with effect from 1/7/90).

An employer who fails to remit the contributions and administrative charges and or submit the monthly and other periodical returns is liable to be prosecuted under Section 14 of the Act. For failure to remit employees share recovered `from the wages, the employer shall also be liable for prosecution under Section 406/409 of the I.P.C.

The employers are liable for action under the penal provisions of the Act in case they default compliance with the provisions of the Scheme. This is apart from the provisions relating to levy of penal damages and recovery of the outstanding dues as revenue under the Revenue Recovery Act:

- (1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act, the Scheme, the Pension Scheme or the Insurance Scheme or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with fine of five thousand rupees, or with both.
- (1A) An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause a of sub-section (3) of section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to three years but -
 - (a) which shall not be less than one year and a fine of ten thousand rupees in case of default in payment of the employees" contribution which has been deducted by the employer from the employees" wages;

- (b) which shall not be less than six months and a fine of five thousand rupees, in any other case:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.

- (1B) An employer who contravenes, or makes default in complying with, the provisions of section 6C, or clause (a) of sub-section (3A) of section 17 in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than six months and shall also be liable to fine which may extend to five thousand rupees:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.

- (2) Subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance Scheme may provide that any person who contravenes, or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to four thousand rupees, or with both.
- (2A) Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or noncompliance, be punishable with imprisonment which may extend to six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees.

Self Assessment

State whether the following statements are true or false:

19. When an employer fails to remit the dues under the Scheme within 15 (20 days with 5 days grace period) days of the close of each month the employer will be liable, to pay penal damages as maybe determined by the Regional Commissioner (RC) not exceeding 37% of the arrears.
20. An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause (a) of sub-section 3 of section 17 in so far as it relates to the payment of inspection charges.
21. Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 19 shall.



Case Study

Union of India & Anr vs Ogale Glass Works on 1 September, 1971

Employees' Provident Fund Act, 1952 - Scope of s. 19A of the Act - Whether decision under s. 19A of the Act by the Central Government is final in the facts and circumstances of the case. The respondent company was manufacturing various articles including Lantern and Safety Stoves etc. In November 1952, Employees Provident Fund Act, was passed and the company was making regular contributions to the Provident Fund for all employees. After sometime, another establishment which was carrying on similar business, filed a writ petition in Bombay High Court contesting the claim of the

Contd...

Notes

Regional Provident Fund Commissioner, that the Act applied to all sections of the glass works. The Bombay High Court held that the Act and the scheme applied only to such sections

Union of India and the Regional Provident Fund Commissioner., Maharashtra State, is directed against the judgment and order dated September 17, 1965 of the Bombay High Court allowing Special Civil Application No. 380 of 1964 filed by the respondent company under Art. 226 of the Constitution and quashing the notice of demand dated May 22, 1963 issued by the Regional Provident Fund Commissioner. The circumstances under which the writ petition was filed by the respondent may be stated: The respondent a limited company having its Head Office at Ogalawadi in Satara District was manufacturing at the relevant time Glassware, Stoves, Lanterns and Enamel wares. It had several sections in its factory, namely, (1) Glass Manufacturing Section, (2) Lantern and Safety Stoves Section, (3) Enamel Section, (4) General Section and (5) Canteen Section. In 1951 the Provident Fund Scheme was amended and the Company agreed to make contributions to the fund only if it made profits. There is no controversy that the Act was made applicable to the respondent on October 6, 1952 and the Company had been paying its contribution to the Employees Provident Fund from November 1, 1952. For the purpose of the Fund, a scheme had been framed under the Act. According to the Regional Provident Fund Commissioner, the Act and the Scheme framed thereunder applied to the entire body of employees working under the respondent. Though the Company then raised objections on the ground that only the employees in the Lantern and Stoves Section were covered by the Scheme and that it was bound to make contributions only in respect of those employees, nevertheless, the Company continued to make its share of contribution to the Provident Fund even in respect of other employees working in other sections. In the mean while, another establishment in the area, the Nagpur Glass Works, which was carrying on a business similar to that of the respondent company, filed a writ petition before the Nagpur Bench of the Bombay High Court under Art. 226 of the Constitution.

Question

Critically analyse the above case.

Source: <http://www.indiankanoon.org/docfragment/525458/?formInput=employees%20provident%20fund%20act%201952%20doctype%3A%20supremecourt>

11.8 Summary

- The EPF Act in India also known as the EPF Act 1952 or the Employees' Provident Fund Scheme 1952 is a provision for securing the right to work, education, unemployment, old age, sickness and disablement needs to be made by every state in India.
- To secure the well being of the employees in times of distress, the EPF act in India was formulated.
- The Employee's Provident Funds and Miscellaneous Provisions Act, 1952 is enacted to provide a kind of social security to the industrial workers.
- The Act mainly provides retirement or old age benefits, such as Provident Fund, Superannuation Pension, Invalidation Pension, Family Pension and Deposit Linked Insurance.
- Provision for terminal benefit of restricted nature was made in the Industrial Disputes Act, 1947, in the form of payment of retrenchment compensation. But this benefit is not available to a worker on retirement, on reaching the age of superannuation or voluntary retirement.

- The Employees' Provident Funds Act is intended to provide wider terminal benefits to the industrial workers.
- The Employees' Provident Funds Act, 1952 extends to whole of India except the state of Jammu & Kashmir.
- It applies on every establishment employing 20 or more persons and engaged in industry specified in Schedule I of the Act or any other activity notified by the Central Government.
- Accordingly, the Employees' Provident Fund-Scheme was framed under Section 5 of the Act, which came into force on 1st November 1952.
- The Act was further amended in 1976 with a view to introducing Employees' Deposit Linked Insurance Scheme, a measure to provide an insurance cover to the members of the provident fund in covered establishments without the payment of any premium by these members.

11.9 Keywords

Industry: Economic activity concerned with the processing of raw materials and manufacture of goods in factories.

Insurance: Insurance is the equitable transfer of the risk of a loss, from one entity to another in exchange for payment.

Interest Rate: An interest rate is the rate at which interest is paid by borrowers for the use of money that they borrow from a lender.

Legislation: Legislation (or "statutory law") is law which has been promulgated (or "enacted") by a legislature or other governing body, or the process of making it.

Membership: Belonging, either individually or collectively, to a group.

Pension: A pension is a contract for a fixed sum to be paid regularly to a person, typically following retirement from service.

Salary: A salary is a form of remuneration paid periodically by an employer to an employee, the amount and frequency of which may be specified in an employment contract.

Scheme: A large-scale systematic plan or arrangement for attaining some particular object or putting a particular idea into effect.

Superannuation: Superannuation is a union-initiated long-term savings plan designed to help people in their retirement.

Tripartite: A tripartite is a way of forming a government.

11.10 Review Questions

1. What is the object of the Employees' provident Funds and Miscellaneous Provisions Act, 1952 ?
2. Which are the establishments covered by the Act?
3. Are there any establishments to which the Act is not applicable at all?
4. What are the various modes in which the Central Provident Fund Commissioner can recover arrears of any amount due from any employer under section 8 of the Act?