

**SEMINAR ON
LABOUR LAW**

***PROVIDENT FUND
PENSION &
GRATUITY***

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INDEX

NO.	TOPIC	Pg No.
1.1	EMPLOYEES' PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952- The Perspective	3
1.2	Permissible Area Of Operation: Geographical & Subjective Scope	5
1.3	Operation of the Act	6
1.4	Constitutionality of Section 1(3)(b)	6
1.5	Composite Factories	7
1.6	Scope of expression “ are employed”	7
1.7	Meaning of expression “ in which twenty or more persons are employed”	8
1.8	Casual or Temporary Persons, power to exempt	8
1.9	Non applicability of the Act	9
1.10	Change of location or business	9
1.11	Calculation of Period of Infancy	9
2	EMPLOYEES PROVIDENT FUND SCHEME	10
2.1	The Institution of Provident Fund	11
2.2	Employee,	11
2.3	Employer,	11
2.4	Rate of Contribution,	11
2.5	Mode of Contribution	12
2.6	Basic wages as a basis for calculation of contribution	12
2.7	Protection against attachment	13
2.8	Priority of payment of contribution over other debts	13
2.9	Employer not to reduce wages and benefits	13
3	EMPLOYEES FAMILY PENSION SCHEME, 1971	14
3.1	Contributions	14
3.2	Benefits	14
3.3	Pensionable Service	14
3.4	Pensionable Salary	14
3.5	Monthly members Pension	14
3.6	In case of a new entrant	15
3.7	Commutation	15
3.8	Option for return of capital	15

3.9	Benefits of leaving service before being eligible for pension	16
3.10	Benefits on permanent and total disablement during the service	16
3.11	Benefits to the family on the death of a member	16
3.12	Guarantee of Pensionary benefits	16
3.13	Administration	16
4	EMPLOYEES DEPOSIT-LINKED INSURANCE SCHEME (EDLI)	17
4.1	Administrative Charges	17
4.2	Withdrawal of Provident Fund and Pension Fund	17
4.3	Taxability,	17
4.4	Transfer of Provident Fund monies from previous employer	17
5	Central board of Trustees	18
6	THE PAYMENT OF GRATUITY ACT 1972:-	23
6.1	Nature and concept and Purpose of Gratuity.	23
6.2	Gratuity and Pension	24
6.3	Gratuity and Provident Fund	24
6.4	Gratuity and Retrenchment Compensation	24
6.5	Applicability	25
6.6	Constitutionality of the Payment of Gratuity Act	25
6.7	Employee:- Temporary workers, Daily paid workers, Apprentices	26
6.8	Gratuity when payable	26
6.9	Gratuity Entitlement	27
6.10	Exceptions	27
6.11	Nomination	27
6.12	The Gratuity limit has been raised from 3.5 lakhs to 10 lakhs	27
6.13	Maximum limit	28
6.14	Determination of Gratuity Amount	28
6.15	Wages,	28
6.16	Recovery of Gratuity,	29
6.17	Gratuity Disputes,	29
6.18	Forfeiture of Gratuity	29
7	Conclusion	30
7.1	Bibliography	32

1. Employees' Provident Fund and Miscellaneous Provisions Act, 1952

The Perspective

Provident Fund is a form of retiral benefits but unlike gratuity where all the financial burden falls on the employer, this is contributory in the sense that besides putting in service, a worker has also to contribute a part of his wages. The scheme of provident fund has, till now, made a headway and a good number of employees have been brought within the purview of the Employees Provident Fund and Miscellaneous Provisions Act 1952, as also its counterpart for coal industry, namely, the Coal Mines Provident Fund and Bonus Scheme Act, 1948. The tea plantation workers in Assam Tea Plantation Provident Fund Scheme Act 1955. The seamen receive the benefit under the Seamen's Provident Fund Act 1966. But still a vast majority of industrial workers have been kept beyond the purview of the Act.

The Employees' Family Pension Scheme became effective from 1-3-1971. "In the year 1976, the Act was further amended with a view to introducing yet another social security scheme The Employees' Deposit linked Insurance Scheme thus came into effect from 1-8-1976."

The Employees' Provident Fund Act "is essentially a measure for the welfare of the employees, and if the Act applies and scheme has been framed for an establishment, the employer is bound to make the contribution as provided for under Section 6. There is a statutory liability on the employer to pay the contribution at the rate mentioned in Section 6. Stringent provisions have been made for non-compliance with the requirement of the statute and very drastic powers have been given to the authorities to recover the contribution due from an employer. Though there is a hierarchy of officials, nevertheless, it is only the Central Government that has been given power under Section 19-A to give a direction not inconsistent with the provisions of the Act if any doubt arises regarding one or the other matters referred to in clauses (1)(b)(v) and the power is to be exercised when any difficulty or doubt arises in giving effect to the provisions of the Act"

1.2. PERMISSIBLE AREA OF OPERATION

Geographical Scope

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 one of the important statutory measures in the arena of retiral benefits, extend to the whole of India, except the State of Jammu and Kashmir.

Subjective Scope

Sub- Section (3) of Section 1 enumerates the subjective scope of the Act and provides (subject to the provision contained in Section 16) that the Act applies:

- a) To every establishment which is a factory engaged in any industry specifies in Schedule I and in which twenty or more persons are employed; and
- b) To any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify.

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

The liability to contribute to the provident fund, under sub-clause (3) of Section 1 of the Act, is created the moment the scheme is applied to a particular establishment. The employer has the obligation to pay contribution from the date of extension of the provisions of the scheme to the particular establishment and the obligation arises neither from the date of the notice nor from the date the employee is made to become a member of the fund. It is plain from the provision referred to above that the under lying idea behind it is that the moment the Central Government decides to bring an establishment within the purview of the Act and issues the requisite notification, the Scheme becomes applicable to that establishment by its own force.

In *Visva Bharti v R.P.F. Commissioner*¹ a question arose whether the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act was applicable to the Visva Bharati University? The Calcutta High Court answered the question in negative and observed.

“From Section 4 of the Visva Bharati Act, it is clear that the Visva Bharati University was constituted a body corporate as unitary teaching and residential University. Therefore, if the University as an establishment does not come under the provisions and /or the purview of the Act, the different branches or departments of the University which the University is empowered and /or entitled to maintain under the provision of the Visva Bharti Act cannot be brought within the mischief of the Act”.

1.3 Operation of the Act

This Act comes into operation by its own vigour. It became enforceable against the employer of an establishment with effect from the date on which the relevant clause of the scheme came into force and it does not depend either on any decision being taken by the authorities under the Act or upon the discovery made by the authorities of the department or on the issue of the notice calling upon the employer to make contribution according to the Act².

1.4 Constitutionality of Section 1(3)(b)

In *Mohamedalli v Union of India*³, it has been, inter alia, contended that (i) Section (1)(3)(b) is invalid because it confers uncontrolled and uncanalised power on the government; (ii) the scheme is bad under Article 14 of the Constitution because it is discriminatory. The Supreme Court rejected both the contentions.

¹ (1983) 1 LLJ 332 (Cal)

² *Shapoorji Nuserwanji & Co v Trustee E.P.F.S.* (1968) 1 LLJ 739

³ AIR 1964 SC 980

1.5 Composite Factories

Are composite factories covered under Section 1(3) (a) of the Act? This issue was answered in the affirmative by the Supreme Court in a series of decided cases.

In *Regional Provident Fund Commissioner v Krishna Metal Mfg Co*⁴, the Supreme Co. The Court held that in order that the factory should fall under Section 1(3)(a) it must be shown that it is engaged in any such industry as is specified in Schedule I and the number of its employees should not be less than 50 (as required prior to the Amending Act of 1960)

In *Associated Industries Pvt Ltd v Regional Provident Fund Commissioner*⁵. The company was running two distinct industries viz engineering works and tile factory, in the same premises. While the engineering works employed 24 persons the tile factory employed 50 workmen. The Regional Provident Fund Commissioner demanded contribution from the company because the engineering works were covered by Schedule I of the Act. The company challenged the validity of the orders made by the Regional Provident Fund Commissioner. The court held: If the factory carries on one industry which falls under Schedule I and satisfies the requirements as to the number of employees prescribed by the section, it clearly falls under Section 1(3)(a).

1.6 Scope of expression “ are employed”

The Supreme Court in *Provident Fund Inspector, Guntur v T.S. Hariharan*⁶ observed: The number of persons to be considered to have been employed by an establishment for the purpose of this Act has to be determined by taking into account the general requirements of the establishment for its regular work which should also have a commercial nexus with its general financial capacity and stability and that where there was prima facie evidence to show that twenty or more persons were employed in the factory specified in Schedule I, the Act would apply to such establishment.

⁴ AIR 1962 SC 1536

⁵ AIR 1964 SC 314

⁶ (1971) 1 LLJ 416 (SC)

1.7 Meaning of expression “ in which twenty or more persons are employed”

The full bench of the Allahabad High Court in *Ramesh Metal Works v State*⁷ held that the correct construction of the phrase “are employed” in clause (a) is that it refers to the point of time of the initial application of the Act to an establishment. If the number of employees in an establishment to which the Act has already applied falls subsequently below the prescribed number, the establishment would not cease to be regulated by the Act.

1.8 Casual or Temporary Persons

The Supreme Court in *Provident Fund Inspector v T.S.Hariharan*⁸: The word ‘Employment’ means the employment in the regular course of business of an establishment. Such employment will not include employment of a few person for a temporary emergency beyond the control of the establishment.

The Supreme Court accordingly held that casual labour would not be taken into consideration in counting the number 20, but it was not necessary that they should have been employed for full 1 year before they could be called regular employee and included in the said number.

Power to exempt

Section 17 empowers the appropriate Government to exempt any establishment whether prospectively or retrospectively, from the operation of all or any of the provisions of any Scheme, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification.

⁷ AIR 1962 ALL 227 (FB)

⁸ (1971) 1 LLJ 416 (SC)

1.9 Non applicability of the Act: Section 16 lays

- a) To any establishment registered under the Co-operative Societies Act 1912 or under any other law for the time being in force in any State relating to co-operative societies employing less than fifty persons and working without the aid of power; or
- b) To any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefits of contributory provident fund or old age person in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or
- c) To any other establishment set up under any Central Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age person in accordance with any scheme or rule framed under that Act governing such benefits; or
- d) Newly set up until the expiry of a period of three years from the date on which such establishment has been set up.

1.10 Change of location or business In *Lakshmi Rattan Engineering Works v Regional Provident Fund Commissioner*⁹, The Supreme Court held that a change in location of an establishment or a change in the line of business would not have the effect of setting up a new establishment provided there was continuity of work.

1.11 Calculation of Period of Infancy In *Laxmi Rattan Engineering Works v R. P. F Comm. Punjab*¹⁰, The Court held that the period of 3 years for the purpose of Section 16(1)(b) should be counted from the date on which the establishment was first established and the fact that there had been a change in the ownership would make no difference.

⁹ (1966) 1 Lab IC 741(SC)

¹⁰ (1966) 1 Lab IC 741(SC)

2. EMPLOYEES PROVIDENT FUND SCHEME

Section 5 is the key of the Act and it provides for the institution of employees' provident fund scheme. The basic purpose of the Act is to require that appropriate provision should be made by way of provident fund for the benefit of the employees engaged in establishments to which the Act applies. Rules made for the institution of the funds provide for contribution both by the employees and the employers and there can be little doubt that the purpose intended to be achieved by the Act is a very beneficent purpose in that it assures to the employees concerned the payment of specified amounts of provident funds in due time.

2.1 The Institution of Provident Fund Section 5 empowers the Central Government to frame a scheme, viz Employees' Provident Fund Scheme, for the establishment of provident fund for employees and specify the establishment or class of establishment to which the scheme shall be applicable. In exercise of this power the Central Government has framed Employees' Provident Fund Scheme in 1952. The scheme framed under Section 5(1) may provide for all the matters specified in Schedule II

2.2 Employee Section 2(f) defines "employee" to mean:

- a) Person
- b) Employed
- c) In any kind of work, manual or otherwise, or in connection of the work of any establishment
- d) For wages whether directly or indirectly from an employer.

The definition includes any person employed by or through contractor in or in connection with the work of the establishment.

2.3 Employer : Section 2(e) of the Act defines the term “employer” to mean:

- a) In relation to an establishment which is a factory:
 - i) The owner or occupier of the factory;
 - ii) Agent of such owner or occupier;
 - iii) Legal representative of the deceased owner or occupier;
 - iv) Person named as manager of factory under Section 7(1)(f) of the Factories Act;
- b) In relation to any other establishment
 - i) The person/ authority who has the ultimate control over the affairs of the establishment
 - ii) Where the said affairs are entrusted to the Manager, Managing Director, Managing Agent, such Manager, Managing Director or Managing Agent.

2.4 Rate of Contribution

The rate of contribution to be made to the fund by the employers under Section 6 of the Act is 6 ¼ per cent of the basic wages, D.A and retaining allowance, if any. The employees contribution shall be equal to the contribution payable by the employer but the employee can contribute on voluntary basis upto 8.3 percent under the proviso to this section, the Central Government are empowered, after making such inquiry as may be deemed fit, to enhance the rate of contribution from 6 ¼ to 8 per cent in respect of any establishment or class or establishments. In exercise of this power, the Central Government have enhanced the rate of contribution to 8 per cent in respect of establishment employing 50 or more persons. The National Commission on Labour recommended that the rate of contribution should be enhanced from 6 1/4 % to 8% and from 8% to 10% . The Commission also recommended that the additional contribution may be utilized for provision of extra benefits to workers.

2.5 Mode of Contribution

Para 30 of the scheme provides that the employer shall in the first instance pay both contribution payable by him and also on behalf of the member employed by him. Thus the employer to whom that applies owes a duty in view of para 30 of the scheme to pay both his share and the employees share of contribution irrespective of the fact whether the demand has been made or not, and whether the employees have or have not paid their shares.

2.6 Basic wages as a basis for calculation of contribution

“Basic wages” Section 2(b) defines: All emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

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

Any emolument can be regarded as “basic wages” if it bears the following characteristics;

- i) The payment shall be by way of emolument;
- ii) The emolument must be earned;
- iii) The emolument must be earned on duty, i.e for service rendered or by way of leave wages
- iv) It must be provide for by the terms of employment or contract or service.

2.7 Protection against attachment

Section 10 affords protection of ‘fund’ against attachment “ the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or the exempted employee, and neither the official assignee appointed under the Presidency Towns Insolvency Act 1909 nor any receiver appointed under the Provincial Insolvency Act 1920 shall be entitled to, or have any claim on, any such amount. It has been held that even if a member leaves his services he could be regarded as member of the fund within the meaning of Sec 1 and, therefore his provident fund could not be attached or any receiver appointed under the Provincial Insolvency Act shall not be entitled to or have any claim on such amount.¹¹

2.8 Priority of payment of contribution over other debts

Section 11 of the Employees Provident Funds Act 1952 provides that where an employer is a company under liquidation, the contributions to be made by the employer to the provident fund are to be paid in priority to all other debts.

2.9 Employer not to reduce wages and benefits Section 12 of the EPFA provides that: No employer in relation to an establishment to which any scheme applies shall, by reason only of his liability for the payment of any contribution to the fund or any charges under this Act or the Scheme, reduce, whether directly or indirectly, the wages of any employee to whom the scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund to which the employee is entitled under the terms of his employment, express or implied.

¹¹ Rameshwar Lal Agarwala v Kuti Man, 1969 Lab IC 790

3. EMPLOYEES FAMILY PENSION SCHEME,1971

3.1 Contributions : From and out of the contributions payable by the employer by each month towards Provident Fund, a part of the contribution representing 1-1/6 % of the employee's pay along with an equivalent amt. of 1-1/6% from and out of employer's contribution shall be remitted by the employer to the Family Pension Fund. (Employees includes those employed by contractor).The Central Govt. shall also contribute at the rate of 1-1/6% of the pay of the members of the family pension fund.

3.2 Benefits : A member of the Employee Provident Fund shall continue to be such member till he attains the age of 58 years or he avails the withdrawal benefit to which he is entitled under the Scheme, or dies or the pension is vested in him in terms of the Scheme, whichever is earlier.

3.3 Pensionable Service: of the member shall be determined with reference to the contributions received or receivable on his behalf in the Employee Provident Fund . In the case of the member who superannuates on attaining the age of 58 years and who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding a weightage of 2 years.

3.4 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 the membership of the Employee Provident Fund.

3.5 Monthly members Pension: a member shall be entitled to

- a) Superannuation pension if he has rendered eligible service of 10 years or more and retires on attaining the age of 58 years.
- b) Early pension if he has rendered eligible service of 10 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years.

3.6 In the case of a new entrant: the amount of monthly superannuation pension or early pension, as the case may be, shall be computed in accordance with the following factors namely:-

Monthly Members Pension= $\frac{\text{Pensionable Salary} \times \text{Pensionable service}}{70}$

70

3.7 Commutation: A pensioner can opt to commute one third of his monthly pension. For eg a pensioner draws Rs 600/- p.m If he opts to commute, the commuted value will be equal to $\frac{1}{3} \times 600 \times 100 = 20,000$ and the same shall be paid at the time of exercise of option for commutation. The balance of pension payable on monthly basis is Rs 400/-

3.8 Option for return of capital: a member eligible to pension may, in lieu of pension normally admissible, subject to commutation of pension, if any, opt to draw for reduced pension and avail of return of capital under any of the three alternatives given below.

SL No	Alternatives	Revised Pension payable	Amount payable as return of capital
1.	Revised pension during life time of member with return of capital on his death.	90% of original monthly pension.	100 times of the original monthly pension on death of member to the nominee
2.	Revised pension during the life time of member, further reduced pension during life time of the widow or her remarriage, whichever is earlier and return of capital on widow's death / remarriage.	90% of original monthly pension to the member. On his death 80% of the original monthly pension to the widow.	90 times the original monthly pension on death of widow / remarriage to the nominee.
3.	Pension for a fixed period of 20 years notwithstanding whether the member lives for that period or not.	87.5% of the original monthly pension for a fixed period of 20 years. The pension will cease thereafter.	100 times the original monthly pension at the end of 20 years from the date of commencement of pension to the member if he is alive, otherwise to his nominee.

3.9 Benefits on leaving service before being eligible for monthly members pension: If a member has not rendered the eligible service prescribed on the date of exist, or on attaining 58 years of age, whichever is earlier, he shall be entitled to a withdrawal benefit as laid sown or may opt to receive the scheme certificate provided on the date she has not attained 58 years of age.

3.10 Benefits on permanent and total disablement during the service: A member, who is permanently or totally disabled during the employment, shall be entitled to pension as admissible may be subject to a minimum of Rs 250 per month notwithstanding the fact that he has not rendered the pensionable service entitling him to pension provided that he has made at least one months contribution to the Pension Fund. The monthly members pension isn such cases shall be payable from the date following the date of permanent total disablement and shall be tenable for the life time of the member.

3.11 Benefits to the family on the death of a member: Subject to certain conditions, Pension to the family shall be admissible from the date following the date of death of the member.

3.12 Guarantee of Pensionary benefits: None of the pensionary benefits under this Scheme shall be denied to any member or beneficiary for want of compliance of the requirements by the employer, however that the employer shall not be absolved of his liabilities under the Scheme.

3.13 Administration: The Family Pension Fund shall vest in and be administered by the Central Board of Trustees. The Family Pension Scheme may provide for all or any of the matters specified in Schedule III. The Family Pension Scheme may provided that any of its provisions shall be effective either prospectively or retrospectively on such date as may be specified in this behalf in that Scheme.

4. EMPLOYEES DEPOSIT-LINKED INSURANCE SCHEME (EDLI)

- Apart from contributing to provident fund and pension fund, employer is also required to contribute towards Employee Deposit Linked Insurance Scheme.
- The rate of contribution is 0.5% of the wages.
- The employees need not contribute any thing towards this scheme.

4.1 Administrative Charges

The employer is also required to pay administrative charges at 1.10% of emoluments towards provident fund charges and 0.01% towards EDLI Scheme 1976. Employees need not contribute any thing towards these charges.

4.2 Withdrawal of Provident Fund and Pension Fund : A member is eligible to apply for withdrawing his provident fund and pension fund only after 2 months from the date of resignation, provided that he / she is not employed during the said 2 months. The member should submit Form 19 to withdraw his provident fund dues on leaving service/retirement/termination. To claim pension, the member is required to submit Form 10 C. The member needs to fill in Forms 19 and 10c and get it signed from the previous employer and submit it to the provident fund office (in many cases, the employer will themselves help by submitting the forms). Normally, it takes about 40 days to have the monies credited to the bank account of the member after submission of the relevant forms.

4.3 Taxability : The withdrawals are exempt from tax if the concerned employee has rendered continuous service of more than 5 years. Otherwise, it would be taxable at the applicable slab rates.

4.4 Transfer of Provident Fund monies from previous employer to current employer :A resigned employee who joins another company is left with an option of transferring the PF monies from his previous PF account to the current PF account, by filling the Form 13.

5. CENTRAL BOARD OF TRUSTEES

Employees Provident Funds and Miscellaneous Provisions Act provides for the establishment of Central Board of trustees for the administration of the scheme. It is a body corporate having perpetual succession and common seal. It can sue and be sued in its own name.

5.1 Composition: The central board of trustees is tripartite in nature and having representation of employers, employees and the Central Government. It consists of the following persons namely:

- a) A chairman to be appointed by Central Government
- b) Not more than five persons appointed by the Central Government from amongst its official;
- c) Not more than fifteen persons representing governments of such States as the Central Government may specify in this behalf, appointed by the Central Government.
- d) Six persons representing employers of the establishments to which the scheme applies, appointed by the Central Government after consultation with such organizations of employers as may be recognized by the Central Government in this behalf; and
- e) Six persons representing employees in the establishments to which the scheme applies, appointed by the Central Government after consultation with such organizations of employees as may be recognized by the Central Government in this behalf.

The strength of members of the Central board as per report of the Employees' Provident Fund Review Committee is 32. This number is too large. The Review Committee, therefore, suggested that there should be a provision for appointment of Standing Committee to dispose of routine matters.

5.2 Terms of office of the Members The terms and the condition of the members referred to in clauses (a) to (e) of Section 5-A shall be such as may be provided for in the scheme. They shall meet at such time and place which may be provided for in the scheme. Further, the board shall follow such procedure as may be specified in the scheme.

5.3 Powers and Functions of Central board: The Central Board shall, subject to the provisions of Section 6-A, administer the fund vested in it in such manner as may be specified in the scheme. It shall perform such functions as it may be required to perform by or under any provisions of the scheme, the Family Pension Scheme and the Insurance Scheme.

5.4 State Board of Trustees: For decentralization of administration Section 5-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 empowers the Central Government (after consultation with the Government of any State) to constitute for that State, a Board of Trustees to be known as the State Board, in such manner as may be provided for in the scheme.

5.5 Regional Committees: Since State Boards have not yet been constituted the Central Government has set up Regional Committees for the State for achieving efficiency by decentralization and administration. It shall function under the control of the Central Board. The Central Board has set up 16 regional offices and 22 sub-regional offices for administering the scheme by 1981-82.

5.6 Constitution Under Para 4 of the Scheme the Regional Committees consist of the following:

- a) A chairman appointed by the Central Government.
- b) Two persons appointed by the Central Government on the recommendation of the State Government.
- c) Three persons representing employers appointed by the Central Government in consultation with the recognized organizations of employers in the State concerned.
- d) Three persons representing employees appointed by the Central Government in consultation with recognized organization of the employees in the State concerned.
- e) Non-official members of the Central Board of Trustees ordinarily resident in the State.

5.7 Functions: The Regional Committees are advisory bodies and shall advise the Central Board:

- (i) On such matters as the Board may refer to them from time to time.
- (ii) Generally on the matters connected with the administration of the scheme in the State and, in particular, on –
 - a) Progress of recovery of provident fund contributions and other charges;
 - b) Expeditious disposal of prosecution cases;
 - c) Speedy settlement of claims;
 - d) Annual rendering of accounts to members; and
 - e) Speedy sanction of advances.

5.8 Appointment of Officers and Staff: The Central board is empowered to appoint a Central Provident Fund Commissioner who is to be the Chief Executive Officer of the Central Board. He is to function under the general control and superintendence of the Central Board. The Government may also appoint Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner and other officers, to assist the Central Provident Fund Commissioner in the discharge of his duty.

5.9 Powers of the Commissioner, Deputy and Regional Provident Fund Commissioner to determine money due from the Employer.

- (i) Determine any amount due from any employer under any provisions of the Act or the Family Pension Scheme or the Insurance Scheme;
- (ii) Conduct such enquiry as he may deem necessary to determine the liability of the employer;
- (iii) Make an order, on the basis of enquiry of the amount due from an employer.

5.10 Constitutionality of Section 7-A In *Wire Netting Stores v R.P.F. Commissioner*¹² a division bench of the Delhi High Court was called upon to decide the constitutionality of Section 7-A of the Act. The court held that Section 7-A was violative of Article 14 of the Constitution, The court added that Article 14 of the Constitution which ensures justness and fairness in State action is only possible if there is provision for judicial or quasi- judicial determination after effective hearing.

¹² 1981 Lab IC 1015 (Del)

5.11 Powers of the Commissioner under Section 7-A(2)

- 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;

5.12 Duty of the Authorities : The authorities under the Act have a statutory duty to see that the compliance of the provisions of the Act and the scheme framed thereunder is made. Section 7 enjoins a duty on a Regional Provident Fund Commissioner to make determination of the dues. When the applicability of the scheme is not disputed the Regional Provident Fund Commissioner may make the determination.

5.13 Power to recover damages : Section 14-A of the Employees Provident Fund Act deals with the power to recover damages. Where an employer makes default in the payment of any contribution to the fund (the family fund or the Insurance fund) or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 [or sub- section (5) of Section 17] or in the payment of any charges payable under any other provision of this Act of (any Scheme or Insurance Scheme) or under any of the conditions specified under Section 17 (the Central Provident Fund Commissioner, or such other officer as may be authorized by the Central Government, by notification in the Official Gazette in this behalf) may recover from the employer such damages, not exceeding the amount of arrears, as it may think fit to impose. Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.

5.14 Default in the payment of contribution: Section 14-B imposes an obligation on the employer to make the stipulated payments within the prescribed period. Failure to make the payments within the stipulated time results in default of payment of contribution.

5.15 Quantification of damages- Assessment:

(1)The damages shall not exceed the amount of arrears. These words show that the determination of damages is not an inflexible application of the rigid formula.

(2) “as it may think to impose” show that the authorities are required to apply their mind to the facts and circumstances of the cases.

5.16 Recovery Proceedings : Mode of recovery of money due from Employer Section 8 if the amounts are in arrears, be recovered by the Central Provident Fund Commissioner or an officer authorized by him in the same manner as an arrear of land revenue:

A. Unexempted Establishments

- i) Contribution to the Provident Fund and the Insurance Fund
- ii) Damages
- iii) Accumulation required to be transferred on applications of the P F Scheme.
- iv) Accumulation standing to the credit of an employee on cancellation of exemption.
- v) Any charges payable under the Act, Provident Fund Scheme or Insurance Scheme.

B. Exempted Establishments

- i) Damages
- ii) Any charges payable under the Act or conditions of exemption.
- iii) Contributions to the Family Pension Scheme.

5.17 Recovery of money from Employer and Contractor : Section 8-A enables the employer to recover the contributions of an employee, employed through a contractor, from the contractor either by deduction from any amount payable to the Contractor under any contract or as a debt payable by the contractor. It also enables the contractor to recover the contributions of such employees by deducting the same from their basic wages etc.

6. THE PAYMENT OF GRATUITY ACT 1972:-

Gratuity is a voluntary Payment made by the employer to the employee in recognition of continuous, meritorious services and sincere efforts by the employee towards the organization. It is governed under the Payment of Gratuity Act 1972. It is an Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, Oilfields, plantations, ports, railway companies, and shops or other establishments.

The payment of gratuity is one of the methods to provide cash benefits to replace at least part of the loss of income that occurs because of old age, invalidity and death. The need for providing social security including gratuity was recognized by the International Labour Organization since its inception.

It is difficult to investigate the real beginning of the system of payment of gratuity in India, but an examination of the report of the Royal Commission on Labour reveals that the system of payment of gratuity was prevalent in railways and was being paid to railway employees in the year 1929, or even earlier.

6.1 Nature and concept of Gratuity. The concept of gratuity is a dynamic concept. It has undergone a change over the last three and a half decades. Originally, it meant gratuitous payment made by the employer to his workmen at his pleasure to keep them contented. With the efflux of time the judiciary has transformed it into a legitimate claim which workers could demand after rendering meritorious service to the employer for a certain period and the industrial tribunals were empowered to decide and the awards were enforceable by the machinery provided under the Industrial Disputes Act 1947.¹³ Gratuity is lump sum payment to which the employee becomes entitled after rendering a long service to the employer.

¹³ Indian Hume Pipe Co v Workmen 1959) 2 LLJ 830 (SC)

6.2 Gratuity and Pension: While Gratuity is a lump sum payment, pension is a periodic payment of certain amount. However, they have much in common: “They are both efficiency devices and are considered necessary for ‘orderly and human elimination’ from industry of superannuated or disabled employees who but for such retiring benefit would continue in employment even though they function inefficiently¹⁴

6.3 Gratuity and Provident Fund: The Employees Provident Fund Act, 1952 is a piece of social security enactment. Freedom from want and security against economic fear is one of the fundamental needs of our country. The Constitution guarantees social and economic justice, but this is yet to be secured by peaceful social and legislative step. The Employees Provident Fund provides for a contributory scheme, which requires an employee to share certain percentage of his earning for old age. The employer is also required to contribute amount equal to those paid by the employees in this scheme. But since it was thought that it would be insufficient to meet his requirement after his retirement, so this amount should be supplemented by the additional scheme of gratuity payable to the employee.

6.4 Gratuity and Retrenchment Compensation: Section 25-F(b) of the Industrial Disputes Act 1947 enjoins on the management to pay at any time retrenchment compensation according to the scale laid therein. It imposes a mandatory condition and non-compliance of it renders the retrenchment order invalid and the employee is entitled to reinstatement. The provision for compensation has to provide shelter to the employees whose services have been terminated not because of their own fault. Gratuity, on the other hand, is paid as the retiral benefit on the termination of service either because of superannuation or death or physical disability.

¹⁴ Burhanpur Tapti Mills Ltd v B.T. Mills Mazdoor Sangh (1965) 1 LLJ 453

6.5 Applicability:-

As per the Gratuity Act, the scheme for the payment of gratuity is available to:

1. Employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental with.
2. Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
3. Such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

6.6 Constitutionality of the Payment of Gratuity Act

The Karnataka High Court in *Sujirkar's Tile Works v Union of India*¹⁵ was called upon to decide the validity of the Payment fo Gratuity Act 1972, The Court held that the Act did not violate Articles 14 and 19(1)(g) of the Constitution and whatever restrictions have been placed by the Act on the employers are permissible under clause (6) of Art 19 of the Constitution.

In fact, the Act seeks to achieve one of the directive principles of State Policy embodied in Article 43 of the Constitution, viz., securing a minimum standard living wage for the workers. The restrictions, if any, imposed by the Act are reasonable and are in the interests of the general public. Hence they are protected by the terms of clause (6) of Article 19. Article 19(1)(b) and 19(1)(i) and Article 31 have not been violated. The Act does not also offend Article 14 of the Constitution.

¹⁵ (1979) 54 FJR 281

6.7 Employee :-

The term “employee” is defined in Section 2(e) of the Act as any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;’. The definition excludes any person: Who holds a post under the central government or a State Government and is governed by any other Act or by any rules, providing for payment of gratuity

Temporary workers: The Act makes no distinction between permanent and temporary workers. Once the worker is able to comply with the qualifying period he would be entitled to gratuity irrespective of the fact whether he is temporary or permanent.

Daily paid workers: The Act does not bar the daily rated workers from claiming gratuity.

Apprentices: Section 2(e) of the Payment of Gratuity Act which defines the word “employees” excludes the “apprentices” . So the apprentice is not entitled to gratuity under the Act.

6.8 Gratuity when payable: Section 4(1) creates right in favour of an employee and creates an obligation upon an employee on termination of his employment in cases where the employee has rendered continuous service for not less than five years.¹⁶ :

- a) On his superannuation
- b) On his retirement or resignation; or
- c) On his death or disablement due to accident or disease.

However, in case of death or disablement of the employee, it is not necessary that the employee must have completed continuous service of five years. In such cases the gratuity is payable to his nominee or if no nominee has been made, to his heirs.

¹⁶ Bombay Union Dyeing & Bleaching Mills v Narayan, 1981 Lab IC 1415, 1449 (Bom)

6.9 Gratuity Entitlement: Gratuity is payable to an employee (nominee – in case of death of employee) who has rendered continuous service of five years or more on his termination of employment, superannuation, retirement or resignation. Completion of continuous service of five years is not necessary where the termination of employment is due to death or disablement due to accident or disease.

6.10 Exceptions:- Forfeiture of gratuity amount wholly or partially or to the extent of Damage /loss in case of an employee whose service has been terminated for:

1. Any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer; or
2. Act of riotous or disorderly conduct or any other act of violence on part of employee; or
3. Any act which constitutes an offence involving moral turpitude, in the course of his employment.

6.11 Nomination:- In case of death, the gratuity is payable to any of the following persons:

1. Nominee
2. Heirs (in absence of nomination)
3. In case nominee/ heir is a minor, such amount will be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

6.12 The Gratuity limit has been raised from 3.5 lakhs to 10 lakhs:-There has been amendment in the Payment of Gratuity Act 1972, following proposal of Labor and Employment Ministry, demands from trade unions and others to remove the ceiling or increase the maximum payable amount, which was fixed in 1997. It shall come into force on 24 May 2010 as per the Notification in the Official Gazette.

6.13 Maximum Limit :-*The Gratuity limit as per Section 4(3) has been raised from 3.5 lakhs to 10 lakhs.* This will give advantage to both private and public sector employees. According to this new amendment, the maximum gratuity exemption as per IT Act also increases to Rs. 10,00,000.

6.14 Determination of Gratuity Amount

1. For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned.
2. The Gratuity calculation is done as per the last average remuneration drawn and time in years served by an employee.
3. The amount of gratuity payable to an employee shall not exceed Rs. 10,00,000 (increased from Rs. 3,50,000).
4. In order to compute the gratuity payable in case of employees employed in seasonal establishments, daily wages, or piece rated employees. Computation will be as per the provision of the Act.
5. It can be formulated as follows: **Basic + DA (Wages Last drawn)* 15days 126 * number of years of continuous service (six months or less to be ignored and more than six months to be counted as full year)**

6.15 Wages: All emoluments which are earned by an employee while on duty or on leave in accordance with terms and conditions of his employment and which are paid or are payable to him in cash and include dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance. In *Straw Board Mfg Co Ltd v Workmen*¹⁷ while upholding an award, the S C held that 'wages' would mean and include dearness allowance.

¹⁷ (1977) ILLJ 463

6.16 Recovery of Gratuity

Under Section 8, an employee if the amount of gratuity payable under this Act is not paid by the employer, may make an application to the controlling authority under Rule 17 or Rule 18 as the case may be. The controlling authority, however has got no right to recover the amount of gratuity *suo motu*. Where an amount of gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the controlling authority can get it recovered through the Collector as arrears of land revenue for payment to the persons entitled¹⁸. The Collector is empowered to recover the amount of gratuity from the employer along with the compound interest at the rate of nine per cent per annum from the date of expiry of the period of recovery as arrears of land revenue and pay the same to the employee entitled thereto. This provision has been incorporated to safeguard the interest of the employer to avoid unnecessary harassment and to deter the employer from denying the payment of gratuity.

6.17 Gratuity Disputes In case of any dispute with respect to gratuity, the amount must be deposited with controlling authority and application must be made to authority for direction within 90 days of occurrence. Controlling Authority shall make due inquiries and if claim is found admissible, direct payment is made to person entitled. Such issue of direct payment must be made to employer within 30 days from date of receipt of the same by employer.

6.18 Forfeiture of Gratuity If service is terminated by any act, willful omission, negligence causing damage or destruction of property , forfeiture is to the extent of damage.

Wholly or partially forfeited :If termination is due to riotous or disorderly conduct or violence on employees part and for offence involving moral turpitude in course of employment.

¹⁸ Cawnpore Sugar Works Ltd v Appellate Authority 1982 Lab IC 967 (All)

Conclusion

The Employees' Provident Fund Organisation abbreviated to EPFO, is a statutory body of the Government of India under the Ministry of Labour and Employment. It administers a compulsory contributory Provident Fund Scheme, Pension Scheme and an Insurance Scheme. It is one of the largest social security organisations in the India in terms of the number of covered beneficiaries and the volume of financial transactions undertaken. The EPFO's apex decision making body is the Central Board of Trustees (CBT). The total assets under management at more than ₹5 lakh crore (US\$91 billion) as of 1 May 2013.

"To extend the reach and quality of publicly managed old-age Income security programs through consistent and ever-improving standards of compliance and benefit delivery in a manner that wins the approval and confidence of members in our methods, fairness, honesty and integrity, thereby contributing to the economic and social well-being of members".

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 came into effect on 4 March 1952. The organisation is administered by a Central Board of Trustees, composed of representatives of the Government of India, provincial governments, employers and employees. The board is chaired by the Union Labour Minister of India. The Chief Executive of the EPFO, the Central Provident Fund Commissioner, reports to the Union Labour Minister through the Permanent Secretary in the ministry. The headquarters of the organisation is in New Delhi.

The Constitution of India under "Directive Principles of State Policy" provides that the State shall within the limits of its economic capacity make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old-age, sickness & disablement and undeserved want. The EPF & MP Act, 1952 was enacted by the Parliament of India and came into force with effect from 4 March 1952 as part of a series of legislative interventions made in this

direction. The orders of the Department can be appealed to Employees' Provident Fund Appellate Tribunal at New Delhi. The Tribunal is located at Scope Tower, Laxmi Nagar, New Delhi and is presided by Presiding Officer who is a member of Judicial Service and by a Registrar who is deputed from the central government cadres.

The EPFO has the dual role of being the enforcement agency to oversee the implementation of the EPF& MP Act and as a service provider for the covered beneficiaries throughout the country. To this end, the Commissioners of the Organisation are vested with vast powers under the statute conferring quasi- judicial authority for search and seizure of records, assessment of financial liability on the employer, levy of damages, attachment and auction of a defaulter's property, prosecution and arrest and detention in civil prison.

Administratively, the organisation is organised into zones which are headed by an Additional Central Provident Fund Commissioner for each of the political states in the country. The states have either one or more than one Regional Offices headed by Regional P.F. Commissioners (Grade I) which are further sub- divided into Sub-Regions headed by Regional P.F. Commissioners (Grade II). To assist them are Assistant P.F. Commissioners. Most of the districts in the country have small district offices where an Enforcement Officer is stationed to inspect the local establishments and attend to grievances.

The total manpower of the EPFO is at present more than 20000 including all levels. The Commissioner cadre numbering 815 are recruited directly, competitively, through the Union Public Service Commission of India as well as through promotion from lower ranks. Subordinate Officers (Enforcement Officers/Accounts Officers) are also recruited directly in addition to promotion from the staff cadre of social security assistants.

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