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1. Article

Proposal To Enhance Statutory Wage Ceiling Under the EPF & MP Act, 1952 and its Impact.

Introduction

The Central Government is contemplating to enhance wage ceiling under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. (in short "**EPF Act**"), which is a long-standing demand of the employee's associations. The objective of the proposed change is to increase the social security coverage, by bringing more employees under the ambit of the EPF Act, and to provide better retiral benefits in the form of provident fund and higher pension. In this article I will be examining how the proposed change will impact the employers and employees. Same will be explained with the help of illustrations.

The objective of the EPF Act is to provide retiral benefits like, Provident Fund, Pension to the employee, after superannuation or Family pension to the dependents of the deceased employee and assurance benefit to the dependents, in case of death of an employee. Three schemes are framed under the EPF Act, viz.

- a) The Employees' Provident Fund Scheme, 1952 ("**EPF Scheme**")
- b) The Employees' Pension Scheme, 1995 ("**Pension Scheme**")
- c) The Employees' Deposit Linked Insurance Scheme, 1976 ("**EDLI Scheme**")

Rate Of Contribution

The EPF Act mandates the employer to contribute 12% of aggregate of basic wage, dearness allowance and retaining allowance, if any payable, and employee's contribution shall be equal to the contribution payable by the employer.

Provident Fund Account and Pension Account

Before examining the financial impact of the proposed enhancement of wage ceiling, it is apposite to discuss the distribution of contributions payable by the employer and employee between two accounts named, Provident Fund Account and Pension Fund Account.

The contributions payable by the employer and employee to the EPFO will be apportioned between Provident Fund Account and Pension Fund Account. Employee's contribution of 12% will be credited to 'Provident Fund Account', out of the 12% contribution payable by the employer, 8.33% of wages (basic wage, dearness allowance and retaining allowance, if any) will be credited to the 'Pension Account', balance, 3.67% will be credited to 'Provident Fund Account'. Thus, 15.67% of wages (employee's 12% plus employer's 3.67%) will be credited to 'Provident Fund Account'.

In addition, employer is required to contribute 0.50% of the wages as administrative charges and 0.50% towards the EDLI Scheme.

Existing Wage Ceiling

Central Government by Gazette Notifications number/s G.S.R. 608 (E), G.S.R. 609 (E) and G.S.R. 610 (E) dt. August 22, 2014 enhanced the wage ceiling to Rs 15,000 from Rs. 6500 for the purpose of EPF Scheme, Pension Scheme and EDLI Scheme respectively.

Impact of the proposed enhancement in wage ceiling

The impact on the employer and employee will be studied with the help of illustrations as under.

1) No Impact

In certain cases, there will not be any impact on the employer and on take home salary of the employees.

Scenario A: Where employee drawing basic salary more than Rs. 21000:

For example, if an employee joined prior to September 1, 2014¹ and exercised a joint option, under para 11(3) of pre-amended Pension Scheme or u/p 11(4) of amended Pension Scheme of 2014, along with the employer to contribute on actual basic wages to avail higher pension by virtue of the Supreme Court decision in *EPFO V. Sunil Kumar & Ors. Etc*². and drawing basic salary of Rs 40,000. In this case the impact will be as follows.

Assume employee rendered a continuous service of 21 years, and by virtue of para 10(2) of the Pension Scheme his pensionable service will get increased by 2 years, i.e to 23 years.

Rate	Impact, under existing wages ceiling of Rs. 15000	Impact, post enhancement of wage ceiling to Rs. 21000
PF Employee @ 12% ---(A)	Rs. 4800 (12%*40000)	Rs. 4800 (12%*40000)
PF Employer @ 3.67% --(B)	Rs. 1468 (A)-(C)	Rs. 1468 (A)-(C)
Pension Employer @ 8.33% --- (C)	Rs. 3332 (8.33%*40000)	Rs. 3332 (8.33%*40000)
Pension = (Pensionable Salary) X (Pensionable Service)/ 70	= (40000) X (23)/70 = Rs. 13143 per month	= (40000) X (23)/70 = Rs. 13143 per month

Impact

In case of an employee whose basic is more than Rs. 21,000 and contributing on actual basic salary (*after exercising joint option for higher pension*), the proposed enhancement of wage ceiling does not impact both employer and employee.

¹ By GO No. G.S.R. 609 (E) dt. August 22, 2014 Central Govt. amended Pension Scheme.

² SPL (c) Nos. 8658-8659 of 2019

Scenario B: Where employee drawing basic salary more than Rs. 21000, however, joined post September 1, 2014.:

For example, if an employee joined after September 1, 2014, by virtue of para 6(a) of the Pension Scheme, he is not entitled to membership under Pension Scheme as his basic salary exceeds statutory threshold of Rs. 15,000.

Rate	Impact, under existing wages ceiling of Rs. 15000	Impact, post enhancement of wage ceiling to Rs. 21000
PF Employee @ 12% ---(A)	Rs. 4800 (12%*40000)	Rs. 4800 (12%*40000)
PF Employer --(B)	Rs. 4800 (A)-(C)	Rs. 4800 (A)-(C)
Pension Employer @ 8.33% --- (C)	0	0
Pension = (Pensionable Salary) X (Pensionable Service)/ 70	0	0

Impact

Neither employer nor employee got affected by change in wage ceiling. Hence, the class of employees who are drawing basic salary above Rs. 21000 and joined subsequent to the notification of Employees' Pension Amendment Scheme, 2014 (i.e. joined after September 1, 2014) will not be impacted by the proposed enhancement.

2) Subscription under the EPF Scheme and Pension Scheme will be increased

Employer is required to bring more number of employees under the ambit of EPF Scheme in certain cases. As per the existing wage ceiling, employees drawing basic salary up to Rs. 15000 are mandatorily covered under the EPF Act. Enhanced wage ceiling mandates the employer to extend the provident fund and pension benefit to more number of employees, thus, it affects finances of the employer. Employees drawing basic salary between Rs. 15001 to Rs. 21000 will get benefited by proposed change. Same is explained in *Scenario C*.

Scenario C: Where employee drawing basic salary less than Rs. 21000 but more than Rs. 15,000:

For example, an employee's basic is Rs. 20,000 joined after September 1, 2014, and employer is contributing on actual basic salary. In this case, as per the existing wage ceiling, employee is not entitled to become member of Pension Scheme by virtue of para 6 (a) of the Pension Scheme. Once the wage threshold increased to Rs. 21,000 from Rs. 15000, employees who are not members of the Pension Scheme previously are entitled to membership and are eligible to pension after superannuation.

Assume employee rendered a continuous service of 21 years, by virtue of para 10(2) of the Pension Scheme his pensionable service will get increased by 2 years, i.e to 23 years.

Rate	Impact, under existing wages ceiling of Rs. 15000	Impact, post enhancement of wage ceiling to Rs. 21000
PF Employee @ 12% --- (A)	Rs. 2400 (12%*20,000)	Rs. 2400 (12%*20,000)
PF Employer @ 3.67% -- (B)	Rs. 2400 (A) – (C)	Rs. 734 (A) – (C)
Pension Employer @ 8.33% --- (C)	0	Rs. 1666 (8.33%*20000)
Pension = (Pensionable Salary) X (Pensionable Service)/ 70	0	= (20000) X (23)/70 = Rs. 6571 per month

Impact

- Post enhancement of wage ceiling, Pension Scheme benefits are extended to the employees, who are drawing basic salary between Rs. 15001 to Rs 21000.
- There is an additional financial burden on employer as more employees fall under the ambit of the EPF Act. Due to increase in the subscription rate, employer is bound to pay employer's contribution, administrative charges and EDLI charges in respect of newly covered employees.
- Net take home of the existing employees, who are members of the EPF Scheme and Pension Scheme, will not get affected. However, there is an additional subscription under the Pension Scheme.
- In case of existing employees who are not covered under Pension Scheme, once they entitled to membership of Pension Scheme post wage revision, 8.33% of the basic wage will get diverted to Pension Scheme. It results in reduction in the provident fund accumulations.

3) Higher Pension and Increase in provident accumulations at the time of superannuation

In certain instances, there will be a financial burden on the employer due to proposed enhancement of wage ceiling. Employer bound to contribute more in respect of each employee, who already covered under the Act. Employees net take home will also get reduced. However, employees will see increase in their retiral benefits.

Scenario D: Where employee drawing basic salary more than Rs. 21000, however, contributions are restricted to statutory threshold of Rs. 15,000.

For example, an employee's basic is Rs. 30,000 and rendered a continuous service of 21 years, by virtue of para 10(2) of the Pension Scheme his pensionable service will get increased by 2 years, i.e to 23 years. Though, the basic salary is Rs. 30,000 employer is discharging the liability on statutory threshold of Rs. 15,000.

Rate	Impact, under existing wages ceiling of Rs. 15000	Impact, post enhancement of wage ceiling to Rs. 21000
PF Employee @ 12% --- (A)	Rs. 1800 (12%*15,000)	Rs. 2520 (12%*21,000)
PF Employer @ 3.67% -- (B)	Rs. 550 (A) – (C)	Rs. 770 (A) – (C)
Pension Employer @ 8.33% --- (C)	Rs. 1250 (8.33%*15000)	Rs. 1750 (8.33%*21000)
Pension = (Pensionable Salary) X (Pensionable Service)/ 70	=(15000) X (23)/70= Rs. 4929 per month	=(21000) X (23)/70=Rs. 6900 per month

Impact

- Employer is required to pay an additional amount of Rs. 720 (Rs. 2520- Rs. 1800) post wage enhancement and net take home of the employee get reduced by Rs. 720.
- Pension under the new regime will get increased by an amount of Rs. 1971 (Rs. 6900 – Rs.4929).
- More money will be deposited in provident fund account of the employee resulting in increment in retirement benefit.

Conclusion

The proposed revision in wage ceiling will result in the following:

- Increase in membership of Employees Provident Fund Scheme and Pension Scheme.
- Employer' contributions in respect of each employee will get increased in certain cases, results in financial burden. In addition, there is a marginal increase in PF administrative charges and EDLI charges.
- Net take home salary of the employee will get reduced.
- There will be hike in pension in respect of certain class of employees.
- Provident fund corpus will get increased.

2. Legal Updates

The Employees' State Insurance Act, 1948 ("ESI Act")

1. Absence of past records does not absolve the petitioner from payment of statutory dues. – SC

Tata Consultancy Services Ltd. V. Deputy Director, Employees' State Insurance Corporation [C.A No. 10343 of 2011; dt. March 13, 2024]

The subject matter of the present appeal is the order passed by the Andhra Pradesh High Court dt. August 04, 2010.

The predecessor of the appellant, CMC Limited, was directed by the respondent to discharge ESI in respect of the contract workers engaged by it during 1978 to 1988 by an order u/s 45A; when no response was elicited to the show cause notices issued. Subsequent to the order u/s 45A, the CMC Limited submitted a reply contending that the workers in question are workers of the contractors and

were not on pay roll of the company and the demand is time barred. Further, it contended, it is the contractors who are liable to discharge the liability. The respondent approached the ESI court cum Industrial Tribunal ("**Tribunal**"), which passed the order in favour of the CMC Limited. On appeal, High Court set aside the order of the Tribunal. Aggrieved appellant appealed to the Supreme Court. During the pendency of civil appeal, the CMC Limited got merged with the appellant.

The SC held that the appellant herein had stepped into the shoes of CMC Limited in the year 2015. Absence of the records for the relevant period or non-availability of the relevant records to produce before the respondent for seeking any set off, cannot be a valid plea to shirk payment of statutory dues.

The EPF & MP Act, 1952 ("EPF Act**")**

2. Employer can claim deduction under IT Act, provided the employees' share of PF and ESI deposited within the due date prescribed under the respective Acts. – Rajasthan HC

Principal Commissioner of Income Tax Jaipur -II, Jaipur V. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. [D.B.IT appeal No. 329 of 2018; dt. September 26, 2024]

The present appeal is filed against the order passed by the Income Tax Appellate Tribunal, Jaipur bench. The respondent company, which is engaged in distribution of electricity, filed income tax return for the assessment year 2009-10 and assessment was done. One issue aroused in the assessment proceedings was "*whether deduction can be allowed if employees' share of PF and ESI is deposited after the due date stipulated under the EPF Act and ESI Act respectively*".

ITAT taken a view that employees' contribution to provident fund and ESI is governed by the provisions of the Sec 43B of the Income Tax Act, 1961 ("**IT Act**") not by sec 36(1)(va).

On appeal the Rajasthan HC, relying on the decision of the Supreme Court in *Checkmate services Pvt. Ltd. V. Commissioner of Income Tax-I*³ wherein it held that share of employees' deducted by the employer towards provident fund and ESI has to be deposited within the due dates prescribed under the respective acts not in accordance with the sec 43B of the IT Act, if the deposit is in compliance with the provisions of the EPF Act and ESI Act, the retained amount is treated for deduction under IT Act.

3. In addition to contributing on higher wages, employees are required to exercise joint option with the employer to avail higher pension under Pension Scheme. – Patna HC

Sudhir Kumar and anr. V. the Union of India and Ors. [CWP case No. 20195 of 2019; dt. December 19, 2024]

Petitioners are retired employees of Bihar State Food and Civil Supplies Corporation, invoked the Writ Jurisdiction seeking pension on higher pensionable salary in terms of decision of the Supreme Court in *R. C Gupta & Ors. V. the RPFC, EPFO & Ors.*⁴.

³ (C.A No 2833 of 2016)

⁴ (2018) 14 SCC 809

Petitioners had contributed on higher wages to avail higher pension with matching contribution by the employer. Petitioners contended that at the time of superannuation the aggregate of basic salary and dearness allowance was Rs. 19,035. However, the respondent, EPFO has fixed the pension on statutory wage ceiling of Rs. 6500. Respondent EPFO contended, to get eligible to higher pension, employer and employee are required to make contributions on higher wages, in addition, it is mandatory to submit a joint option u/p 26(6) of the EPF Scheme and u/p 11(3) of the Pension Scheme, which had not been complied by the employer and employee.

The EPFO further contended that the Hon'ble Supreme Court in the case of *R.C. Gupta (supra)*, has held that exercise of option u/p 26(6) of the EPF Scheme is inevitable and necessary precursor to exercise option u/p 11(3) of the Pension Scheme, since there is no joint option exercised the petitioners cannot claim pension on higher wages.

The Patna HC, relying on decision of the Supreme Court in *Employees Provident Fund Organization & Ors. Vs. Sunil Kumar B. & Ors*⁵ and on its own decision in *Ram Nandan Prasad V. The Union of India & Ors*⁶, held, petitioners are entitled to get the benefit of pensionable salary restricted to the statutory limit as the employer and the employees did not submit any joint request before the competent authority to contribute on higher wages the excess contribution shall be treated as erroneous and shall be refunded to the petitioners.

The Industrial Disputes Act, 1947 (“ID Act”)

4. Employees of the statutory canteen *ipso facto* cannot become the employees of the principal employer – Allahabad HC

Hindustan Aeronautics Ltd. V. Hindustan Aeronautics Karmchari Sabha [W.P.C No. - 1000315 of 2012; dt. November 4, 2024]

The present Writ Petition was filed by the petitioner to quash the award passed by the Presiding Officer, Industrial Tribunal, Luknow.

Hindustan Aeronautics Ltd. (HAL), established a factory at Lucknow in the year 1971-72 for manufacturing accessories of aircrafts. A canteen was set up in the factory premises for providing eatables to the workmen at subsidised rates. The canteen was being operated by a contractor, who engaged workers to run the canteen. HAL reimbursed the contractor for the wages paid to the canteen employees.

The Governor of Uttar Pradesh (“U.P”) issued a notification under Section 10(1) of Contract Labour (Regulation and Abolition) Act, 1970 (“CLRA Act”) prohibiting employment of contract labour in engineering industries in the state of U.P. HAL requested the U.P. Government for granting exemption from the notification issued under the CLRA Act, and exemption was granted. HAL claims, in view of the exemption granted to it from the notification issued under the CLRA Act, it was free to engage workers through contractors; accordingly, HAL engaged contract workers through a contractor to operate the canteen at subsidised rates. The dispute started when Hindustan Aeronautics Employees

⁵ 2023 (1) PLJR 104 (SC)

⁶ 2014 (3) PLJR 98

Association, Lucknow (**HAEA**) demanded canteen allowance instead of the facility of a subsidised canteen, and the demand was accepted by HAL. Thereafter respondents started opposing the grant of canteen allowance and replacement of subsidized canteen by market rate canteen.

Subsequently, original contract between HAL and the canteen operator for running a subsidized canteen was terminated and a fresh contract for running the canteen at market rates was entered into between HAL and the canteen contractor. HAL issued notices to the employees of the canteen contractor whose services had been terminated and stating that as the contractor did not fulfil his obligations, salary of the employees for the period 01.11.2000 to 25.11.2000, one month's salary in lieu of the notice, retrenchment allowance, gratuity and other dues were paid to the workmen along with the notice. However, the employees declined to receive the notices and the amounts. Dispute raised by the respondents was referred to the Industrial Tribunal, which awarded reinstatement without back wages.

On appeal, the Allahabad HC relying on the decision of the Supreme Court in **Indian Petrochemicals Corpn. Ltd. v. Shramik Sena**⁷, wherein it was held that the “workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act, 1948 (“**Factories Act**”) only and not for all other purposes”. Statutory obligation created under Section 46⁸ of the Factories Act must be restricted only to the Factories Act and it does not govern the rights of employees with reference to appointment, seniority, promotion, dismissal, disciplinary actions, retirement etc. In the light of the Supreme Court decision in **Indian Petrochemicals (Supra)** the Allahabad HC held that there is no employer-employee relation between the workers of the canteen and HAL. Further it held, there is no material to establish that the contract between HAL and the canteen contractor was sham. Thus, workers of the canteen are not entitled to back wages, reinstatement and regularisation of service.

⁷ (1999) 6 SCC 439

⁸ Sec 46 of the Factories Act stipulates, the Occupier of a factory, wherein more than two hundred and fifty workers are ordinarily employed, shall provide a canteen for the use of the workers.

3. Circulars/Notifications

1. EPFO has extended the due date to activate UAN and seed bank account with Aadhar to avail benefits under ELI scheme.

The Employees' Provident Fund Organisation ("**EPFO**") in a circular dt. December 20, 2024 (No:ELI/UAN Activation/2024) extended the due date to activate UAN and seed bank account of the members with Aadhar to January 15, 2025, instead of December 15, 2024.

UAN activation and seeding the Aadhar with the bank account of the members who joined during the current financial year is essential to avail benefits under Employment Linked Incentive ("**ELI**") Scheme' which was proposed in the budget 2024-2025.

Employees whose UAN is activated and have their Aadhar seeded with the bank account are entitled to receive benefit under the 'Direct Benefit Transfer scheme' ("**DBT**").

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