WORKMEN WELFARE WITH RESPECT TO THE EMPLOYEES' PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952 AND ITS PROPOSED AMENDMENTS

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ABSTRACT

Social Security measures are extremely vital in a country to ensure social support for a dignified life inclusive of a stable source of income and access to other basic amenities and opportunities. They aid in taking a step towards the welfare state and enable workers to be more efficient. Social security schemes provided to workers through legislations offers major protection to the workers and should incorporate large sections of workers. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is one such legislation with a wide coverage and focuses on social security measures such as provident funds, pension funds and deposit linked insurance plans for employees in various establishments. This legislation has evolved under the Directive Principles of State Policy, Article 41 of the Constitution. Though this legislation has been brought about for the welfare of the employees, there have been questions related to its impact on the workers. The Government has proposed amendments in the EPF act and the employee's pension scheme which includes the modification of definition of 'wages' as per the Code of Wages 2019, limitation period for enquiry, stricter monetary penalties, prioritizing the payment of provident fund contribution over all other debts to protect employees of companies under insolvency proceedings and a choice for the workers to switch from the employees' pension scheme to the national pension system.1 The researcher will be giving a brief overview of the EPF act, the schemes which were brought under the act and its impact, the amendments proposed in the new Bill and the budget, and analyze the impact of the suggested changes on the workers.

Keywords: *Social Security, Employees' Provident Fund and Miscellaneous Provisions Act, Employee Provident Funds bill 2019, provident fund, workers welfare.*

[1] Sunil Dhawan, EPF (Employees' Provident Fund) Scheme: What is EPF scheme and how to calculate PF balance? The Economic Times (2021), https://economictimes.indiatimes.com/wealth/earn/all-about-employees-provident-fund-scheme/articleshow/58906943.cms?from=mdr (last visited Apr 22, 2021).

Introduction:

The underlying importance of a provident fund is that it is a sort of a welfare scheme to protect the workmen by aiding them with monetary support. It is indeed, without a doubt a vital social security measure, especially in a country like India. India is a country with an enormous workforce, and therefore to ensure a sound social security scheme for the workmen a codified legislation is necessary. Therefore, in the year 1952, the parliament came out with the Employees' Provident Fund and Miscellaneous Provisions Act. The act as previously mentioned is a social security measure enforced by the government, however its main aim is to ensure various social benefits to the "industrial workman". These benefits come in handy during retirement and old age, of these industrial workers. It ensures that post retirement these industrial workers are not left without any social security and economic means. Some of the benefits are provident fund, family pension, superannuation pension, deposit linked insurance invalidation pension, etc.[2]The legislation indeed has good intentions, however since it was passed many years back, there seems to be a need to make a few amendments and improvements to the current legislation.

Need for change:

It is a well-known concept that the law is dynamic, therefore it needs to be improved and amended from time to time. Similarly the situation in the industrial sector has evolved over the years. The previous legislation apart from being outdated, had several ambiguities. The government therefore proposed to make certain amendments in the Employees' Provident Fund and Miscellaneous Provisions Act.

Brief overview of the objective of EPF:

As previously mentioned under the aims of the legislation, the primary objective of the act is to ensure that the works have financial and economic support post retirement, and this further ensures a decent livelihood of the industrial workers during their old age. However, the act consists of various and more specific objectives like:

· To ensure that there is mobilization of the funds that are kept as savings in the provident fund of the employer and employee.

[2] S N Mishra, Labour and Industrial Laws (29 ed.).

· To have a large coverage, so that majority of the workers fall under the ambit of the EPF and thereby ensuring that as many workers as possible gain and benefit through the act.

· To ensure that the saving which are mobilized get a high return on investment, thereby enhancing the finical aid received by the workmen at the time of retirement.

· To initiate and promote the undertaking of various activates that ensure and provide social security to the workmen.

· To facilitate research activates in the concerned area, with relation to the various welfare schemes and look at their various aspects. This would be beneficial in having accurate data about the condition and the welfare of the workers.[3]

The Schemes brought under the act and how it works:

EPF is a retirement benefit plan where both employer and employee contribute a certain percentage of the salary. This is made into a fund, which will be given to the employee at the time of retirement. The aim and objectives of the scheme have already been looked into and mentioned above.

The main scheme under the EPF act is none other than the employment provident fund, which is enforceable under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. This scheme is a two-way process where there are two parties. The employer and the employee. Under this scheme both the parties are required to make financial contributions, to the provident fund. Therefore, how the scheme works is the employer makes a contribution and the employee makes an equal contribution. The contribution paid by the employer is 12 per cent of basic wages plus dearness allowance plus retaining allowance. An equal contribution is payable by the employee also. This happens every year till the time of retirement, where the entire lump sum of money is given to the workmen or the employee who is retiring. The employee can voluntarily pay higher contribution above the statutory rate of 12 percent of basic pay. This is called contribution towards Voluntary Provident Fund (VPF) which is accounted for separately. This VPF also earns tax-free interest.[4] The interest is calculated on the provident fund on a monthly basis. The monthly balance of the fund is taken into consideration while

[3] The Employees' Provident Funds And Miscellaneous Provisions Act, 1952, Act No.19 of 1952

[4] Supra note 1

calculating the interest earned on the provident fund. One of the many benefits of this interest earned by the workman in that it is not taxable. In other words as of today, the amount earned through the interest cannot be taxed by the government.

Proposed changes in the EPF Bill, 2019:

The Ministry of Labour and Employment has proposed the Employees Provident Fund & Miscellaneous Provisions (Amendment) Bill, 2019 which has suggested significant changes to the Act.

New definition of wages:

The definition of wages under the EPF act is being replaced by a new definition in consonance with the code of wages act 2019. The definition includes dearness allowance, basic pay etc. and tends to exclude certain allowances such as house rent, overtime, commission payable, bonus payable etc. for the calculation of EPF contribution. This calculation is subject to the condition that if these allowances are more than 50% of the total salary of the employee, the allowances will also be included for the EPF contribution calculation. This change has been made to clear the ambiguities related to the EPF contribution of an employee.

Limitation period for proceedings:

As per section 7 A of the EPF act the Provident fund Commissioner can initiate an enquiry against an employer to determine any amount that may be due from the employer.[5] The act does not prescribe any time limit to initiate an enquiry against the employer. However, the proposed bill introduces a time limit of five years for initiating proceedings against the employer.

National Pension Scheme:

The draft bill provides a choice to the existing as well as new EPF members to shift from the employees' pension scheme to the national pension scheme. It also gives them the option of

[5] Preetha & Vikram Shroff, INDIA'S PROVIDENT FUND LAW: PROPOSED AMENDMENTS AND NEW CIRCULAR HELPS EMPLOYERS SEE LIGHT AT THE TUNNEL'S END Nishith Desai Associates: India's Provident Fund law: proposed amendments and new circular helps employers see light at the tunnel's end (2019), http://www.nishithdesai.com/information/news-storage/news-details/article/indias-provident-fund-law-proposed-amendments-and-new-circular-helps-employers-see-light-at-the.html (last visited Apr 22, 2021).

shifting back to the employees' pension scheme. The employees shall apply to the Provident fund Commissioner, who shall conduct an enquiry for the same.

Enhancing penalties:

Section 14 provides for penalties for the offences under the EPF act. The fines under this section do not exceed 25,000 rupees. The penalties imposed in the EPF act was set in the year 1988 and have not been revised since then. This amendment has proposed to increase the penalties ten times the current penalty and make certain offences under the EPF act compoundable.

Payment of EPF dues:

The draft Bill proposes to prioritize EPF contributions due to the employees over the other debts of a company undergoing the insolvency process under the insolvency and bankruptcy code 2016.[6] This means that, when the assets of the company are sold during the process, the money shall be used to pay the EPF contribution to the employees, only after which the other dues of the company shall be taken care of. This move will shield the employees of the company undergoing the insolvency process.

Exemptions from EPF scheme:

Section 17 of the EPF act provides for the employer to exempt themselves from the EPF scheme. However, there are no conditions to be satisfied for the same which the draft aims to introduce through the amendment. The proposed Section 17 (1D) shall provide for the conditions that need to be fulfilled for an employer to be exempted from the PF schemes.

Reduction in the rate of employees' contributions:

The draft Bill aims to amend section 6 of the EPF act which would authorise the central government to define establishments where the EPF contributions can be 10% instead of the usual 12%. This would not change the rate of contribution by the employers.

Impact of the amendment:

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[6] Ankit Parhar, Draft Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 2019 – An analysis Lakshmikumaran & Sridharan: Top Law Firm in India (2019), https://www.lakshmisri.com/insights/articles/draft-employees-provident-funds-and-miscellaneous-provisions-amendment-bill-2019-an-analysis/# (last visited Apr 22, 2021).

This amendment is considered to be beneficial for the employers and employees in different ways. The amendment to the definition of wages shall provide consistency and lucidity across other labour legislations. Introducing a time period for initiating proceedings is a positive move. This also ensures the prevention of abuse of authority. However, some opine that the period for the initiation of proceedings along with the period for re-investigation as under Section 7C of the EPF act seems quite long.

The shift from EPS to NPS provides multiple choices for employees for investing their pension benefits. This gives employees an opportunity to decide their method of savings for the future. The increase in penalties is compatible and the compounding of offences reduces the number of cases before the courts. This move avoids minor offences to be judged by courts thereby saving the court's time. The payment of EPF contribution due to the employees over all other debts during the insolvency process will shield the interests of the employees of the insolvent company. The reduction in the EPF contribution may result in an increase in the take home salary of employees. However, the final benefits received from the EPF may reduce due to the decreased EPF contribution.[7]

Conclusion:

The current legislation was in many ways beneficial in providing social security to the workmen for many years. It played a key role throughout the years in aiding the post retirement plans of m any workmen. It has had its own benefits towards the employers. However, the scenario and the conditions in the workplace has been changing and similarly changes in the law has to be made. The amendment is long overdue. Clearly stated in the objective of the former legislation that the main aim to help the workman post retirement. The new legislation with the amendments widens the scope of benefits available to both parties. The employer and the employee both seem to gain beneficially from the amendment as stated above under its impacts. It is a much-needed upgrade in the legislation and is a step in the right direction. The legislation promotes and boosts the benefits which can be availed by the employee. The amendment is being introduced with noble intentions, which will indeed prove to be of much help to the employees upon their retirement and old age.

[7] Your take-home salary may increase if this proposal on EPF gets clearance, ET Now, September 27, 2019, https://www.timesnownews.com/business-economy/personal-finance/planning-investing/article/your-take-home-salary-may-increase-if-this-proposal-on-epf-gets-clearance/496093 (last visited Apr 22, 2021).