



International Workers in India and Provident Fund contributions: Recent Developments

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In a recent significant legal development, on April 25, 2024, the High Court of Karnataka delivered a landmark judgement in the case of ***Stonehill Education Foundation vs the Union of India and Others (WP No.18486/2012)***. This case centered around the introduction of Paragraph 83 in the Employees' Provident Funds Scheme, 1952 and Paragraph 43A in the Employees' Pension Scheme on October 1, 2008, which aimed to extend coverage of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("**EPF Act**") to International Workers. We have provided a high-level summary of the Court order and how it may impact MNCs working in India in relation to their foreign citizen employees working in India for an Indian entity.

Legal background

By way of background, an "International Worker" under the EPF Act and the said Schemes is (a) an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail the benefits under a social security programme of that country by virtue of an eligibility gained or going to gain, under the said agreement; or (b) an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the EPF Act applies.

The provisions under the two Schemes sought to bring International Workers under the purview of the EPF Act and for employers and International Workers to contribute towards the provident fund on their gross salary, irrespective of the amount earned, which is contrary to the provisions applicable to domestic workers, for whom the statutory provident fund contributions could be capped at a monthly basic wage of INR 15,000. There is thus a significant financial impact on International Workers in India, where the provident fund contribution was far higher than a domestic worker.

Case analysis

In the current case, the petitioners had contested the constitutionality of the provisions of the Schemes on the basis of violation of Article 14 of the Constitution

of India as being discriminatory towards International Workers. The petitioners further sought to annul the regulator's (the Regional Provident Fund Commissioner _ I, Bangalore, "RPFC") orders demanding contributions and damages under the EPF Act due to non-compliance with the said provisions of the Schemes.

In the case, the Union of India and the RPFC highlighted the Government's rationale for introducing specific provisions for various categories of workers, including International Workers. The regulatory authorities also emphasized the need to adhere to bilateral agreements with foreign nations in relation to social welfare contributions. Further, the Government contended that the aim of introducing Paragraph 83 of the EPF Scheme was to protect the Indian employees going abroad to work from being subjected to the social security regulations of the host country, which is prejudicial to their interest (as the benefit is provided only after the qualifying period is completed, which is typically 10 years and Indian workers are usually deputed only for a limited time) and to motivate foreign nations to enter into bilateral treaties with India.

In its observations, the Karnataka High Court outlined the prerequisites for permissible classification or distinction, emphasizing the classification made on intelligible differentia, and the need for a rational nexus between the classification and the statutory objectives. The Court further delved into the legislative context of the EPF Act, stating that the purpose of enacting the EPF Act is to safeguard the interests of industrial workers and to inculcate savings for retirement and held that extension of benefits to high-earning individuals (such as an International Worker) is contrary to the original intent of the EPF Act, which is to cater to lower-income groups. The Court also stated that the claim related to the obligation of reciprocity is unsustainable as Paragraph 83 of the EPF Scheme applies only to International Workers with whom India does not have a social security agreement or any bilateral agreement.

The Court ruled in favour of the petitioners, declaring Paragraph 83 of the EPF Scheme and Paragraph 43A of the EPS Scheme unconstitutional and arbitrary. Consequently, all related orders of the RPFC were deemed unenforceable, marking a significant legal precedent in the realm of social security legislation in India – while the judgement is in the jurisdiction of Karnataka, it is likely to have significant persuasive value in other States in the country on this specific aspect.

Way forward and our thoughts

In recent years, there has been a noticeable surge in demand notices issued by the EPF Act regulator, the Employees Provident Fund Organisation ("EPFO") to employers, particularly in the technology and ancillary services sectors, requiring employers to contribute provident fund contributions on the gross salary of International Workers. Failure to pay the provident fund contribution attracts interest at the rate of 12% p.a. on the arrears and damages can go up to 100% of the arrears- depending on the default period – this has resulted in organisations

facing considerable financial outputs for International Workers for whom contributions may not have been made on the gross salary.

While this judgment provides some respite on the higher contribution requirement employers in Karnataka, we believe that the EPFO is likely to file an appeal against the said judgment. However, till such time as the current judgment is set aside by a higher bench of the Karnataka High Court (or the Supreme Court of India), employers in Karnataka, including organisations in Bangalore, are exempted from contributing provident fund for their International Workers.

Employers in Karnataka who may have been non-compliant with the provisions related to International Workers (since the provisions were introduced in 2008 or when the provisions were made applicable to their establishment) adopting a wait-and-watch approach may be fraught with some financial risk. In the event that the judgment is overturned by a higher bench of the Karnataka High Court or the Supreme Court, such employers would be required to settle outstanding contributions, along with interest and damages. However, relief may be granted during the period when the judgment was in effect, specifically in relation to the interest and damages.

Another aspect to consider is how the EPFO will handle potential refund of provident fund accumulations in relation to International Workers previously remitted by an employer (specifically where the employers have made demand for such payment and no appeal has been filed) or if the EPFO will issue clarifications on this matter.

As mentioned above, while the current Karnataka judgment holds persuasive value for other State High Courts, employers in different jurisdictions will need to initiate similar writ petitions in their respective State High Courts, several of which are already pending adjudication. By way of illustration, an employer based in Delhi would be obligated to contribute provident fund amounts for International Workers without any salary limitations, unless a similar judgment is obtained in its jurisdiction.

The Karnataka judgement not only clarifies the parameters of statutory interpretation but also talks about the importance of aligning regulatory amendments with the foundational principles of welfare legislation. It is of both employment compliance and academic interest to see the path to now be followed under the EPF Act.

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