11. THE EMPLOYEES PROVIDENT FUND & MISCELLANEOUS PROVISIONS ACT, 1952

INTRODUCTION:

1. The following 3 schemes have been framed under the Act: (a) The Employees Provident Fund Scheme, 1952 (b) The Employees Pension Scheme, 1995 (c) The Employees Deposit Linked Insurance Scheme, 1976 [EDLI].
2. The Act is administered by Central Provident Fund Commissioner.

Q.No.1. What are the entities to which EPF Act is applicable? (A) (SM)

APPLICABILITY:

1. **Subject to exceptions contained in Sec.16, this Act applies to:**
   a) Whole of India except the State of Jammu & Kashmir.
   b) Every establishment which is a Factory
      - Engaged in any industry specified in Schedule I and
      - In which 20 or more persons are employed on any single day, and
   c) Any other establishment or class of such establishments, employing 20 or more persons, which the Central Government may specify by a notification in the official gazette (even to an establishment which is not a factory)
2. Central Government may extend this Act to any establishment employing less than 20 persons. For this purpose, it has to give at least 2 months notice, by a notification in the Official Gazette.
3. Where the employer and employees having agreed that this Act shall be made applicable to their establishment also and made a request to the Central Provident Fund Commissioner, he may apply this Act to that establishment.
4. The Ministry of Labour & Employment through Notification No. S.O. 30 (E), dated 8th January, 2011 specifies that the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 shall also apply to "Municipal Councils and Municipal Corporations constituted under sub-clauses (b) & (c) of clause (1) of Article 243Q of the Constitution of India.

NOTE POINTS:

1. While calculating the limit of 20 persons, even employees drawing salary above Rs 15,000 p.m. will have to be included.
2. For the purpose of counting 20 persons casual employees are not taken into account but temporary employees, as a part of regular feature of employment, are taken into account.
3. **Once covered always covered:** An establishment, in which 20 or more persons were employed on any day during the year, will continue to be governed by this Act, though the number falls below 20.
4. **Establishment to include All Departments and Branches:** Sec.2A provides that
   - Where an establishment consists of Different departments or has branches, then
   - All such departments or branches whether situated in the same place or in different places,
   - Shall be treated as part of the same establishment.

   In Gangadharan Vaidyan Vs. P.F. Commissioner manufacturing process was being carried only at head office employing 7 persons. But the total number exceeded 20. Act was held to be applicable.
5. **Composite Factories:**
   a) Composite Factories means factories engaged in more than one industry.
   b) If the dominant / primary industry falls under schedule 1 and other subsidiary industries of the

establishment do not fall under Schedule 1, Supreme Court held that the provisions of the Act will apply to all the employees working in the primary industry as well as subsidiary industry.

SIMILAR QUESTION:

1. During 2001-02, the numbers of employees were 50 and subsequently reduced to 10 during 2009-10. Employer discontinued deduction as EPF not applicable due to reduction of employees.

A. Refer "Once covered always covered" - point above.

Q.No.2. State the classes of establishments to which this Act is not applicable. (Or) State the establishments which are exempted from the operations of Employees Provident Funds and Miscellaneous Provisions Act, 1952. (B) (N13 - 4M, M16 - 4M) (PM)

THE ACT IS NOT APPLICABLE TO THE FOLLOWING ESTABLISHMENTS - SEC.16:

1. Any establishment registered under the Co-operative Societies Act, 1912, employing less than 50 persons, and working without the aid of power.
2. Any other establishment belonging to the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme of the Central Government or State Government.
3. Any other establishment set up under any Central or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme framed under that Act.

POWER OF THE CENTRAL GOVERNMENT TO EXEMPT CERTAIN ESTABLISHMENTS:

If the Central Government is of the opinion that it is necessary to exempt certain class of establishments, by way of notification in the Official Gazette, having regard to:

a) The financial position or

b) Other circumstances,

It may do so subject to the conditions as specified, either prospectively or retrospectively (Sec.16 (2)).

Q.No.3. Explain the provisions of the EPF Act relating to Employee's Provident Fund Scheme and its salient features. (Or) State the provisions regarding the Quantum of contribution by the Employees as well as employer under the Employees' Provident Funds and Miscellaneous Provisions Act. Can the amount of contribution be increased by the employee? (A) (PM) (RTP - M16, M14, N15 - 4M)

EMPLOYEE'S PROVIDENT FUND SCHEME - SEC.5:

a) The Central Government may, by notification in the Official Gazette, frame a scheme to be called Employees' Provident Funds Scheme, 1952 for the employees or class of employees of establishments to which the Act applies.

b) It may also specify the establishments or class of establishments to which the said scheme is to apply. The Scheme may provide for all or any of the matters specified in Schedule II of the EPF Act, 1952.

c) Immediately after framing of the Scheme, a Fund shall be established.

d) The fund and scheme shall be administered by the Central Board of Trustees.

THE SALIENT FEATURES OF THE SCHEME ARE AS FOLLOWS:

1. Employees: Every employee to whom this Scheme applies, other than an 'excluded employee', is required to become a member of the Fund from the date of joining the establishment.

2. Contributions:

a) As per Sec.6 of the Act, the contribution to be made by the employer shall be 10% of the

i) Basic wages and

ii) The dearness allowance (include cash value of food concession) and

iii) Retaining allowance, if any.

b) The Central Government may however raise the aforesaid percentage from 10% to 12% in respect of certain establishments or class of establishments.

c) *"Retaining Allowance" means the sum paid for retaining the service, when the factory is not working.*

d) In addition, employees shall make a matching (Equal) contribution but not less than that of employer's contribution.

e) The above rule will prevail whether the employer employs the person either directly or through a contractor.

f) Wage ceiling for the purpose of contribution is Rs.15,000 p.m . if the wage exceeds Rs.15,000 pm, voluntary contributions can be made.

g) **Employees may contribute more:**

i) If they desire to make contribution in excess of the prescribed rate of 10% or 12%

ii) But there is no obligation on the part of employer to contribute more than prescribed amount.

3. **Payment of Contribution:**

a) The employer shall, in the first instance, pay both the contributions payable by himself and on behalf of the employee.

b) Employee's contribution shall be recoverable by means of deduction from wages / Salaries.

c) The Provident Fund Scheme is mandatory not only for the employer but also for the employees and they can't avoid this mandatory liability.

d) In addition, employer has to pay administration charges at 1.10% of wages. In case of exempted establishments, the employer has to pay 0.18% of wages as inspection charges.

4. **Nomination:** Employee's can nominate a person to receive the amount credited to his provident fund account in the event of his death.

5. Advances and withdrawals up to certain limits are allowed for certain specified purposes only.

6. If the amount of any contribution involves fraction of a rupee, the Scheme may provide for rounding off of such fraction to the nearest rupee, half of a rupee or a quarter of rupee.

Q.No.4. Explain the provisions relating to the eligibility for pension scheme under EPF Act. Also state the matters for which provisions are made in the pension scheme under the employees' provident funds and miscellaneous provisions act, 1952 (C) (SM)(RTP M14)

CONTRIBUTION (SEC.6):

a) From out of PF contribution made by employer, 8.33% of salary will be diverted to Employee pension scheme

b) The remittance shall be made within 15 days of the close of every month.

c) Cost of remittance shall be borne by the Employer.

d) The CG shall also contribute at the rate of **1.16%** of the Employees' Pay and credit it to the Fund. For the purpose of calculating the contribution by employer and Central Government, the Employee's pay shall be limited to an amount of **Rs.15,000 only (w.e.f 1.9.2014)**

Minimum monthly pension to be paid by central board of trustees will be of **Rs.1000** w.e.f 01.09.2014. (After retirement or superannuation)

Q.No.5. Write about the "Employee's Deposit-linked Insurance Scheme" (A)
(OR)
In what way is the "EDLI" scheme regulated under EPF ACT, 1952?
(PM) (N11, M13 – 4M)(RTP - M15)

EMPLOYEE'S DEPOSIT-LINKED INSURANCE SCHEME - SEC.6C: (W.E.F. 01-08-1976)

Framing of Insurance Scheme: - Sec.6C empowers CG to frame a Scheme to be called the Employees' Deposit Linked Insurance Scheme. The Scheme framed by CG shall be Specified in the Official Gazette.

ESTABLISHMENT OF INSURANCE FUND: -

a) After the Scheme is framed by CG, a Deposit – linked Insurance Fund shall be established.

b) From time to time Employer should contribute, in respect of every employee, such amount as specified by CG by notification in the Official Gazette. Such amount can't be more than 1% of the aggregate of the basic wages, dearness allowance and retaining allowance (if any)

Explanation: The expressions "dearness allowance" and "retaining allowance" have the same meanings as in section 6.

c) The employer shall pay in to the Insurance Fund such further sums of money, not exceeding 1/4th of the contribution which he is required to make, as CG may, from time to time, determine. The payment is towards all the expenses in connection with administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that Scheme.

d) **Administration of Insurance Fund**: The Insurance Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Insurance Scheme.

e) **Benefits under the Insurance Scheme**: The Scheme provides for life insurance benefits to the employees of any establishment or class of establishments to which this Act applies.

f) The Insurance Scheme may provide for all or any of the matters specified in Schedule IV.

PROVISIONS OF THE INSURANCE SCHEME:

1. The benefits under the Employees' Deposit Linked Insurance Scheme, 1976 as amended by the Employees' Deposit Linked Insurance (Amendment) Scheme, 2014 are briefly stated as under:

2. If at the time of death of employee, he was a member, his nominee shall be entitled to receive one-time lumpsum amount as insurance benefit.

3. Such amount shall be calculated as follows:

a) Average monthly wages drawn (subject to a **maximum of Rs.15,000**) during the 12 months preceding the month in which the member died, shall be multiplied by 20.(i.e. 20 months of average salary)

b) An amount, equal to the average balance in the account of the deceased in the provident Fund during

i) Preceding 12 months or

ii) During the period of his membership,

Whichever is less,

c) However, if the average balance exceeds Rs.50,000, the amount shall be restricted to Rs.50,000 plus 40% of the amount in excess of Rs.50,000, subject to a maximum of Rs.1,00,000.

d) Higher of (a) and (b) above shall be calculated.

e) The higher amount, as calculated in (c) above shall be **increased by 20%.**

f) The amount calculated as per (d) above shall be the final amount payable as insurance amount.

Q.No.6. What do you know about the constitution, rights and duties of the Central Board, with regard to EPF Act? (OR) State the composition and functions of the Central Board as provided under the provisions of EPF Act. (A) (N09, M11 – 4M) (SM)

1. **Board of Trustees / Central Board (Sec.5A):** The Central Government is empowered to constitute Board of Trustees called Central Board for administering the Employee's Provident Fund. This has to be exercised through a Gazette Notification.
2. **Constitution / Members of the Board:** It shall consist of the following persons as members:
   - **a)** A Chairman and a Vice-Chairman to be appointed by the Central Government.
   - **b)** The Central Provident Fund Commissioner as ex-officio member.
   - **c)** Not more than 5 persons appointed by the Central Government from amongst its officials.
   - **d)** Not more than 15 persons representing Governments of such states as the Central Government may specify in this behalf, appointed by the Central Government.
   - **e)** 10 persons representing employ**ers** of the establishments to which the scheme applies, appointed by the Central Government.
   - **f)** 10 persons representing employ**ees** in the establishment to which the Scheme applies, appointed by the Central Government.

   The apex body to administer provident fund is Central Board of Trustees. It consists of about 43 members. It can delegate its powers to Executive Committee.
3. **Executive committee:** The Central Government may, by notification in the Official Gazette, constitute an Executive Committee to assist the Central Board.

RIGHTS OF CENTRAL BOARD OF TRUSTEES:

1. Right to administer the fund, in such a manner as specified in the scheme.
2. **Right to perform other functions:** The Central Board shall have the right to perform such other functions as may be required under any provisions of the Provident fund Scheme, Family Pension Scheme and the Insurance Scheme.
3. **Right to appoint officers:** The Central Board shall have the right to appoint Additional, Deputy, Regional or Assistant Provident Fund Commissioners and other staff for efficient administration of the Scheme.
4. **Right to delegate functions:** The Central Board shall have the right to delegate its powers and functions to any of its officers for the efficient administration of the Scheme.

DUTIES OF CENTRAL BOARD OF TRUSTEES:

1. **Maintenance of proper Accounts:** It shall maintain proper accounts of its income & expenditure relating to the fund.
2. **Audit:**
   - **a)** The accounts of the Central Board shall be audited by the Comptroller and Auditor-General of India (Here in after referred as "C&AG")
   - **b)** Audit fees shall be paid by the Central Board.
   - **c)** The C&AG and any person appointed for audit purpose, shall have the right to inspect books, vouchers, documents etc. and inspect any of the offices of the Central Board.
3. **Duty to forward audit report to the Central Govt.:**
   - **a)** The accounts as certified by the C&AG together with the audit report will be handed over to the Central Board.
   - **b)** Central Board shall forward the same to the Central Government.
4. **Duty to submit annual report:** It is the duty of the Central Board to submit an annual report of its activities to the Central Government.
5. **Laid before Parliament:** The Central Government shall place a copy of the Annual Report, Audited accounts, Audit report & the comments of the Central Board thereon, before each House of Parliament.

Q.No.7. Write a short note on the Executive Committee under the EPF Act. (B)
(Or)
Discuss the Power of CG to set up an Executive Committee under the EPF Act. (Or) State the composition of Executive Committee. (SM) (N 09 - 5M)

EXECUTIVE COMMITTEE (Sec.5AA): The Central Government may, by notification in the Official Gazette, constitute an Executive Committee to assist the Central Board.

MEMBERS OF THE EXECUTIVE COMMITTEE: [Notification No.S.O.1045 (E), dated 13th May, 2011 by the Ministry of Labour and Employment]

The Executive committee shall consist of the following persons as members, namely:

1. The secretary to the Government of India from the Ministry of Labour and Employment will be appointed by the Central Government as the Chairperson.
2. 2 persons, Additional secretary to the Government of India and the Financial Advisor from the Ministry of Labour and Employment will be appointed by the Central Government.
3. 3 persons representing the Governments of the states will be appointed by the Central Government. (At present the Representatives of the Government are Assam, Rajasthan and Tamilnadu)
4. 3 persons representing the Employers of establishments to which the scheme applies will be appointed by the Central Government.
5. 3 persons representing the Employees in the establishments to which the scheme applies will be appointed by the Central Government.
6. The Central Provident Fund Commissioner of Employees Provident Fund Organisation.

SIMILAR QUESTION:

1. State whether true or false - "The chairman of the Executive Committee is appointed by the Central Board".

A. This statement is false because the Chairman of the Executive Committee is appointed by the Central Government and not the Central Board.

Q.No.8. What is the time limit for settlement of claims for Provident Fund by the Commissioner and what are the consequences for delay in settlement? (C) (PM) (For students self study)

1. The Provident Fund claims, complete in all respects, submitted alongwith the requisite documents shall be settled and the benefit amount shall be paid to the beneficiaries within 30 days from the date of its receipt by the Commissioner.
2. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application.
3. In case the Commissioner fails without sufficient cause to settle such claim complete in all respects, within 30 days, the Commissioner shall be liable for the delay beyond the said period.
4. Penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.

Q.No.9. What is the liability of an Employer for delay in payment of claims due from him? (B) (PM)

RATE, LIMIT AND PERIOD OF PAYMENT OF INTEREST: As per Sec.7Q of the Employees Provident Funds and Miscellaneous Provisions Act, 1952

1. The employer shall be liable to pay simple interest

- at the rate of 12 % per annum or
- at such higher rate as may be specified in the Scheme on any amount due from him under this Act.

2. Although the upper limit of interest rate is not given in the Act, but it is clearly given that the higher rate of interest specified in the Scheme cannot exceed the lending rate of interest of any scheduled bank.
3. The period for which the employer is liable to pay the interest is from the date on which the amount has become so due till the date of its actual payment.

SIMILAR QUESTION:

1. X, an employee of a Tata company filed a claim for provident fund settlement with the Provident Fund Commissioner. One year past after the filing of the claim but he did not get any settlement from the authority. State in the light of the EPF & MP Act, 1952, what course of action an authority in this respect should have taken. **(RTP – N 13)**

A. Refer above question

(IMMEDIATELY REFER PRACTICAL QUESTION NO.2, 3 & 4)

Q.No.10. State the provisions of the EPF Act, 1952 with regard to recovery of money due from the Employer. (OR) State the action that can be taken by the Recovery officer for recovery of the amount due from the employer, who is in arrear in respect of his contribution to the Provident Fund under the scheme. (A) (PM)

ISSUE OF CERTIFICATE TO RECOVERY OFFICER (SEC.8B):

1. Where any amount is in arrear from an employer, the authorised officer may issue to the recovery officer, a certificate under his signature specifying the amount of arrears.
2. The recovery officer shall then proceed to recover the amount specified in the certificate from the establishment or the employer by one or more of the modes/ways mentioned below:
   a) Attachment or sale of the movable or immovable property of the establishment or the employer,
   b) Arrest of the employer and his detention in prison,
   c) Appointing a receiver for the management of the movable or immovable properties of the establishment or the employer.
3. The attachment and sale of any property be first effected against the properties of the establishment and if it is insufficient for recovering the whole of the arrears, the recovery officer may take such proceedings against the property of the employer for recovery of the balance.
4. Where an establishment or the employer has property within the jurisdiction of more than one recovery officer & the recovery officer to whom a certificate is sent:
   a) Is not able to recover the entire amount or
   b) For the purpose of speedy recovery of the amount,
      i) He may send the certificate in the prescribed manner and
      ii) Specify the amount to be recovered by the other recovery officer within whose jurisdiction the establishment or the employer has property.
5. The authorised officer may issue a certificate under section 8B(1) not withstanding that proceedings for recovery of the arrears by any other mode have been taken [Section 8B(2)].
6. Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of the amount, the authorised officer may grant time for the payment of the amount and thereupon the recovery officer shall stay the proceedings until the expiry of the time so granted [Sec.8E].

Note: It may be noted that definition of 'employer' includes a Manager, occupier of factory etc. Hence, their personal property can be attached and sold for PF dues.

Q.No.11. Explain the provisions of the EPF Act with regard to the protection against attachment of Provident Fund. (Or) Is the amount standing to the credit of a member of the Provident Fund attachable in the execution of decree or order of the Court? (A)
(M 09 - 5M, N 12 - 4M)(RTP M15) (SM)

PROTECTION AGAINST ATTACHMENT - SEC.10:

1. **Protection to employee** :
   - **a)** The amount standing to the credit of any member in the Fund shall not be charged.
   - **b)** Such amount shall not be liable to attachment under any order of the court in respect of any debt or liability incurred by the member or exempted employee.
   - **c)** Further, neither the official assignee appointed under the Presidency Town Insolvency Act, 1909, nor any official receiver appointed under the Provincial Town Insolvency Act, 1920 shall be entitled to have any claim on any such amount.
2. **Protection to Nominee** :
   - **a)** The protection applies to provident fund, pension and insurance amount receivable by employee under the scheme.
   - **b)** Further, any amount standing to the credit of a member in the Fund, at the time of his death, shall be payable to his nominee subject to any deduction authorised by the said Scheme.
   - **c)** Any amount so vested in the nominee shall be free from any debt or other liability incurred by the deceased before the death of the member / exempted employee. It shall also not be liable to attachment under any decree or order of Court.
3. The protection is only to the balance in the PF account and not to PF money which is in hands of employee.

SIMILAR QUESTION:

1. State the law with respect to protection of the amount standing to the credit of an employee in provident fund under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952? (Or) X, an employee in ABC Ltd (covered by the EPF and MP Act, 1952) died in an accident. State to whom the amount standing in his account to be payable under the Act. **(RTP M - 16)**

A. Refer above question.

Q.No.12. Explain the provisions of the EPF Act with regard to transfer of accounts of an employee in case of his leaving the employment and taking up employment in another establishment. (OR) An employee leaves the establishment in which he was employed and gets re-employment in another establishment. He desires that his Provident Fund Account be transferred to the establishment wherein he has been employed. Explain the procedure. (A) (PM)

1. **Transfer of accounts (Sec.17A):** Sec.17A provides for the transfer of accounts of an employee in case of his leaving the employment and taking up employment in another establishment.
2. **Where an employee of an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply** then, the amount to his credit may be transferred to the account in establishment, where he is re-employed, if the new establishment is also covered under PF provisions.
3. **However, when an employee of an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies - but has a provident fund of its own** (not under provisions of PF Act), the amount to the credit of employee shall be transferred to such fund within 3 months, at the request of employee.
4. **Similarly, if an employee who was employed in an establishment which was not covered under the Act but had its own provident funds scheme is re-employed in an establishment which is covered under PF Act,** the balance to his credit may be transferred at request of employee to his new Account.

Q.No.13. Explain the liabilities of a person who acquires an 'establishment' from an employer and the employer who sells the 'establishment' under the EPF Act, 1952. (B) (PM)

SEC.17B OF THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952:

1. Where an employer transfers an establishment in whole or in part by way of sale, gift etc., The employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any of the provisions of this Act or the Scheme or the Family Pension Scheme in respect of the period up to the date of such transfer.
2. It is provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

(IMMEDIATELY REFER PRACTICAL QUESTION NO.5, 6)

Q.No.14. State briefly the provisions of the EPF Act, 1952 regarding nomination? (A) (For Students self study)

NOMINATION:

1. Every member of the 'Fund' is required to nominate a person to receive the amount standing to the credit of his provident fund in the event of his death.
2. More than 1 nominee may be appointed and the amount distributed among them in proportion.
3. Nomination must be made in favour of a family member only.
4. Nomination in favour of a person other than a family member shall be invalid. But, where a member does not have a family, nomination may be made in favour of any person but the same shall become invalid on his acquiring a family.

SIMILAR QUESTIONS:

State the validity of the following nominations made under the Employees Provident Funds and Miscellaneous Provisions Act, 1952: **(RTP – N 13)**

1. A nominated B (his wife) and K (his friend) as nominee.
2. R, who is a single with no family, nominated S(relative) as a nominee.

A:

1. The nomination of B by A is valid being a family member but the nomination of the friend (K) is not valid being a friend.
2. (The nomination of S by R is valid because he does not have a family.

(IMMEDIATELY REFER PRACTICAL QUESTION NO.7)

Q.No.15. Explain briefly the appointment of inspectors and their powers under Sec.13 of the Act. (B) (PM) (M15 - 4M) (For students self study)

1. **Appointment:** The appropriate government, by notification in the Official Gazette, may appoint Inspectors for the purpose of this Act and Scheme, specifying their duties and jurisdiction. An Inspector so appointed shall be deemed to be a Public Servant.
2. **Purposes for which powers may be exercised:**
   a) Inquiring into the correctness of information.
   b) Ascertaining compliance with provisions.
   c) Ascertaining applicability of the Act to a particular establishment.
   d) Determining the compliance of conditions for granting exemption.

3. Powers:
   a) **Information:** To require an Employer or Contractor to furnish necessary information.
   b) **Entry and Search:** To enter and search any Establishment or Premises connected therewith at any reasonable time (with such assistance).
   c) **Production of books:** To require any person in charge to produce any account, books, registers and other documents relating to the employment of persons or payment of wages in any Establishment.
   d) **Examination of persons:** To examine (with respect to any matter relevant to any of the above purposes) the Employer / Contractor / their Servant / Agent / other person found in charge of the Establishment or Premises / any person whom the Inspector believes to be or have been an Employee of the Establishment.
   e) **Copies:** Make copies of, or take extracts from, any book, register or other document.
   f) **Seizure:** Seize such book, register, or other document where he has reason to believe that any offence has been committed by the Employer.
   g) **Others:** Exercise such other powers as the Scheme may provide.

(IMMEDIATELY REFER PRACTICAL QUESTION NO.8)

Q.No.16. Explain the provisions of the EPF Act, authorising certain employers to maintain a provident fund account? (C) (PM)

1. **Requirement for maintaining a PF account** - Normally accounts of individual employees are maintained in the "Provident Fund Office".
   a) However, in case of large establishments employing at least 100 employees,
   b) The accounts can be maintained by the employer.
   c) It may be noted that even if accounts are maintained by employer, the PF money has to be deposited with PF authorities.
2. As per Sec.16A, Central Government may,
   a) On an application made to it by the employer and
   b) The majority of employees in relation to an establishment employing ≥ 100 persons,

   Authorise by writing the employer to maintain a provident fund account in relation to the establishment.
3. Such permission will be given subject to terms & conditions.
4. If the employer of such establishment had
   a) Committed any default in the payment of provident fund contribution or
   b) Had committed any other offence under this Act during the 3 years immediately preceding the date of making the application,
   c) No permission / authorisation will be given.
5. **Maintaining of accounts, submitting returns, deposition of contribution etc.** Where an establishment is authorised to maintain a provident fund account, the employer in relation to such establishment shall maintain such accounts, submit such returns & deposit the contribution in prescribed manner.
6. Further such establishment shall pay inspection charges to meet the expenses for the inspection done by the inspectors.
7. **Cancellation of authorization** - Any permission given under this section may be cancelled by the Central Government if the employer fails to comply with any of the terms and conditions of the authorisation or where he commits any offence under any provisions of this Act.

8. Before cancellation, the CG shall give the employer an opportunity of being heard.

9. The order of cancellation shall be in writing.

Q.No.17. Explain the provisions of the EPF Act in relating to reduction of salary or wage by employer or company management (section 12)? (B) (N16 – 4M)

No employer in relation to any establishment to which any Scheme applies shall by reason only of his liability for the payment of any contribution to the Funds or any charge under this Act or the Scheme, reduce directly or indirectly the wages of any employee or the total quantum of benefits in the nature of old age pension, gratuity fund to which the employee is entitled under the term of his employment express or implied.

(IMMEDIATELY REFER PRACTICAL QUESTION NO.10)

QUESTIONS FOR ACADEMIC INTEREST ONLY

Q.No.18. Explain the provisions of EPF Act with regard to determination of 'escaped amount' after an officer has passed an order concerning determination of amount due from an employer under the Act. (C) (PM)

1. **DETERMINATION OF ESCAPED AMOUNT [Sec. 7C]:** In certain cases, previously passed orders determining the amount due from an employer may need to be re-opened. The officer, who had passed such orders, may re-open, if he has the reason to believe that previously the amount was underdetermined (Escaped amount) due to:

a) Omission of any information or failure to disclose all material facts, by the employer, necessary for determining the correct amount due or

b) In consequence of the information available in the hands of the officer, though there has been no omission or failure to disclose information on part of the employer.

In such cases, the officer can pass appropriate orders re-determining the amount due.

2. Such re-opening can be done within a period of 5 years from the date of communication of the original order.

3. Before passing such order, employer must be given an opportunity of being heard.

VERY IMPORTANT - STUDENT PRACTICE EXERCISE

Distinguish the following in respect of Bonus Act, Gratuity Act and PF Act

a) Employer b) Employee c) Exempted establishment/employer

d) Exempted employee e) Disqualified employee f) Wages/Salary

g) Scheme of the Act

PRACTICAL QUESTIONS

Q.No.1. Vimal is an employee in a Company. The following payments were made to him during the previous year: **(PM)**

i. Piece rate wages **ii.** Productivity bonus

iii. Additional dearness allowance **iv.** Value of Puja gift.

Examine as to which of the above payments form part of "Basic Wage" of Vimal under the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

Provisions of Law: Sec 2(b) – Basic Wages.

Analysis: As per section 2(b) of the Employees Provident Fund and Miscellaneous Provision Act, 1952, the "Basic Wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

a) The cash value of any food concessions.

b) Any Dearness Allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of 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 or.

c) Any presents made by the employer.

By applying the above provisions of the Act to the given problem, basic wages of X excludes the productivity bonus, additional dearness allowance and the value of puja gift.

Conclusion: Basic wage of X will include only piece rate wages.

Q.No.2. S retired from the services of PQR Limited, on 31st March, 2009. He had a sum of Rs.5 lakhs in his Provident Fund Account. It has become due for payment to S on 30th April, 2009 but the company made the payment of the said amount after one year. S claimed for the payment of interest on due amount at the rate of 15 percent per annum for one year. Decide, whether the claim of S is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. **(PM) (RTP N15, N10 – 4M)**

Provisions of law: Section 7Q - Interest

Analysis:

1. According Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:
2. Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.
3. As per the above provision, S can claim for the payment of interest on due amount @ 12% p.a. or at the rate specified in the Scheme, whichever is higher, for one year.

Conclusion: Here in the absence of specified rate he(S) can claim only 12% interest p.a. on the due amount. Hence claim of S for interest rate of 15% is not tenable.

Q.No.3. An employee of limited company filed a claim for Provident Fund settlement with the Provident Fund commissioner. However, he did not get any settlement from the authority even after six months. Referring to the EPF & MP Act, 1952 what course of action an authority should have taken in this respect.

Provisions of law: Section 7Q - The Employees' Provident Fund Scheme, 1952.

Analysis:

1. As per Section 7Q of Employees' Provident Fund Scheme, the claims, complete in all respects submitted along with the requisite documents shall be settled and benefit amount paid to the beneficiaries within 30 days from the date of its receipt by the Commissioner.
2. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application.
3. In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may

be deducted from the salary of the Commissioner.

Conclusion: As per above analysis the Commissioner shall be liable for the delay and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.

Q.NO.4. Explain the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act,1952 regarding the following:

a) Rate of interest on amount due from the employer under the Act.

b) Maximum limit of interest rate

c) The period for which the employer is liable to pay the said interest. **(PM)**

Rate, limit and period of payment of interest:

As per Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952

a) The employer shall be liable to pay simple interest at the rate of 12 per cent per annum or at such higher rate as may be specified in the Scheme only if he has delayed in the payment of any amount due from him under this Act. The interest shall be payable from the due date till the date of payment.

b) Although the upper limit of interest rate is not given in the Act, it is clearly mentioned that the higher rate of interest specified in the Scheme cannot exceed the lending rate of interest charged by any scheduled bank.

c) The period for which the employer is liable to pay the interest is from the date on which the amount has become so due till the date of its actual payment.

Q.No.5. Manorama Group of Industries sold its textiles unit to the Giant Group of Industries. Manorama Group contributed 25% of total contribution of the Pension Scheme which was due before sale under the Act. The transferee company refused to bear the remaining 75% contribution in the pension scheme. Decide under EPF Act who will be liable to pay for the remaining contribution in case of transfer of Establishment and up to what extent. **(PM) (For students self study)**

Provisions of law: Sec 17B – Liability in case of transfer of establishment.

Analysis: According to Sec 17B of EPF and MP Act, 1952, where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or license or in any other manner what so ever, the employer and the person to whom the establishment is transferred shall be jointly and severally liable to pay the contribution and other sums due from the employer under the provision of this Act, of the scheme or pension scheme, as the case may be, in respect of the period upto the date of such transfer. It is provided that the liability of the transferee shall be limited to the value of the assets obtained by him from such transferor.

By applying the above provisions in the given case, the transferor i.e. Manorama Group of Industries has paid only 25% of the total liability as contribution in pension scheme before sale of the establishment. With regard to the remaining 75% liability, both the transferor and the transferee companies are jointly and severally liable to contribute. If the transferor refuses to contribute then the transferee will be liable.

The liability is limited for contributions of period upto the date of transfer and upto remaining amount. Further, the liability of transferee i.e. Giant Group of Industries is limited to the extent of assets obtained by it from the transferor of the establishment.

Conclusion: If the transferor company refuses to pay then the transferee company will be held liable subject to the value of assets obtained by the company by such transferor.

Q.No.6. Solar Industries Limited sold its unit to Mars Industries Limited and contributed 30% contribution in the Pension Scheme. The transferee company refused to bear the balance 70% contribution in the Pension Scheme. Decide, under the employees' provident Fund and Miscellaneous Provisions Act, 1952, the liability of remaining contribution. **(PM) (M14 - 4M)**

Provisions of law: The problem asked in the question is based on the provisions of section 17B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Accordingly, where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall be jointly or severally liable to pay the contribution and other sums due from the employer under the provisions of this Act of the scheme or pension scheme, as the case may be, in respect of the period upto the date of such transfer.

Analysis: It is provided that the liability of the transferee shall be limited to the value of the assets obtained upto the date of transfer. It would thus be evident from the aforesaid provisions that section 17B deals with the liability of transferor and transferee in regard to the money due under the Act, scheme or the Pension scheme. In the case of transfer of establishment brought in by sale, gift, lease etc., the liability of the transferor and the transferee is joint and several, but it is limited to the period upto the date of the transfer.

Conclusion: Therefore, applying the above provision of law, Solar Industries Ltd., has paid only 30% of the total liability as contribution in Pension Scheme before sale of the establishment. With regard to the remaining 70% liability both the transferor and the transferee companies are jointly and severally liable to contribute. In case, the transferor refuses to contribute, the transferee is liable but the liability of the transferee (Mars Industries Limited) is limited to the extent of assets obtained by it from the transfer of the establishment.

Q.NO.7. State the validity of the following nominations made under the Employees Provident Funds and Miscellaneous Provisions Act,1952:

a) A nominated B (his wife) and K (his friend) as nominee.

b) R, who is a single with no family, nominated S(relative) as a nominee. **(RTP - N13)**

a) The nomination of B by A is valid being a family member but the nomination of the friend (K) is not valid being a friend.

b) The nomination of S by R is valid because he does not have a family.

Q.No.8. An Inspector appointed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 makes an inspection at 10 p.m. (five hours after factory timings) and seeks to take copies of the "Shareholders' Register". How far under the Act is his action reasonable? **(PM)**

(Or)

An Inspector appointed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 makes an inspection at 8 a.m. (an hour before factory timing) and seeks to take copies of the "Income Tax Returns". How far under the Act is his action reasonable? **(M 15 - 4M)**

Provisions of law: Sec 13 – Inspector

Analysis: According to Sec 13(2) of the Employees Provident Fund and Miscellaneous Act, 1952, an Inspector can inspect and make copies of, or take extract from any books, register or other documents maintained in relation to the establishment and where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such books, register or other document or portions there of as he may consider relevant in respect of that offence.

Further, under section 13 (2) (b) the inspector can enter and search any establishment at any reasonable time which cannot be 5 hours after the factory timings.

Conclusion: In the present case, the inspector had sought to take copies of the shareholder's register which is irrelevant document for the purpose of EPF and MP Act, 1952. Moreover he has visited the office after the working hours which are not reasonable.

Q.No.9. R, a 57 years old district judge was appointed by the Central Government as Presiding Officer of the Employee's Provident Funds Appellate Tribunal for a period of five years. After three years, he (R) resigns from his office and ceases to work with immediate effect without handing over the charge to his successor, who was not appointed by the Government till that date. Examine the validity of R's action to cease work under the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952. **(RTP - N17, N14, M10 - 5M) (PM)**

Provisions of law: Sec 7F of EPF and Miscellaneous Provisions Act.

Analysis: Sec 7F provides that the Presiding officer of Employee's Provident Funds Appellate Tribunal may by notice in writing under his hand addressed to the Central Government, resign his office provided that the presiding officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office

a) Until the expiry of three months from the date of receipt of such notice or

b) Until a person duly appointed as his successor enters upon his office or

c) Until the expiry of his term of office,

Whichever is earlier.

In the given case, R resigned his office with immediate effect without handing over the charge to his successor, who was not appointed by the Government till that date.

Conclusion: R's action is invalid. He should obtain permission from the Central Government to do so.

Q.No.10. Pioneer Mills Ltd has been regularly depositing the Provident Fund Contributions to the Government. Owing to adverse market conditions, the Company suffered losses for the past two years. The Company's Management is considering the reduction of Salary of the Employees to reduce the Company's Contribution to Provident Fund and instead, to pay Compensatory Allowance, so that the Employees pay package remains the same. Explain in terms of the Employees' Provident Fund and Miscellaneous Provision Act, 1952, whether the Company can effect such reduction. **(N 16 - 4M)**

Provisions of law: Section 12 of EPF and Miscellaneous Provisions Act

Analysis: No employer in relation to any establishment to which any Scheme applies shall by reason only of his liability for the payment of any contribution to the Funds or any charge under this Act or the Scheme, reduce directly or indirectly the wages of any employee or the total quantum of benefits in the nature of old age pension, gratuity fund to which the employee is entitled under the term of his employment express or implied. By Appling these provisions it was concluded that company management can not do such reduction.

Conclusion: so company cannot effect such reduction.

PENALTIES & PUNISHMENTS

PARTICULARS	PENALTIES&PUNISHMENTS
Penalty if Commissioner fails without sufficient cause to settle such claim complete in all respects, **within 30 days**	interest at the rate of **12% per annum** may be charged on the benefit amount
Liability Of An Employer For Delay In Payment Of Claims Due From Him	Employer shall be liable to pay simple interest at the rate of **12 % per annum** or At such higher rate as may be specified in the scheme on any amount due from him.

STATUTORY LIMITS

PARTICULARS	LIMIT
Entities to which EPF act is applicable	In which **20** or more persons are employed on any single day
No .of employees Limit for non applicability of EPF Act for establishments working without the aid of power	Employing **less than 50** persons.
Contribution to be made by the employer for provident fund	**10%** of the **i)** Basic wages and **ii)** The dearness allowance (include cash value of food concession) and Retaining allowance, if any.
Wage ceiling for the purpose of contribution to provident fund	Rs.**15,000** p.m
CG contribution to the PF Fund	At the rate of **1.16%** of the employees' pay.
Minimum monthly pension to be paid by central board of trustees	**Rs.1000**
Employer contribution to insurance fund	Not exceeding **1/4th** of the contribution

TIME PERIODS

PARTICULARS	PERIOD
Time limit for payment of benefit amount to the beneficiaries	within **30** days from the date of its receipt by the Commissioner.
Time limit for re-Opening Of Previous Order Concerning Determination Of Amount Due From An Employer Under The Act	Such re-opening can be done within a period of **5 years** from the date of communication of the original order.

TEST YOUR KNOWLEDGE

1. Kumar & Sons company sold its manufacturing unit to X & Co. Kumar & Sons contributed 30 % of total contribution in pension scheme which was due before the sale under the EPF& MP Act, 1952. X & Co. refused to bear remaining 70% of the contribution in the pension scheme. Decide who will be liable to pay the remaining contribution?

2. State whether the following statement is correct/incorrect.

a) The maximum contribution that an employee can make to his provident fund account is 10%.

b) The amount of the provident fund of an employee is not attachable even after it is has been received by the employee.

3. Generally the Employees' Provident funds and Miscellaneous Provisions Act, 1952 applies to entities employing more than

a) 10 persons b) 20 persons c) 100 persons d) 1000 persons

4. The Central Government may apply the provisions of this act even if it employs less than required persons.

a) True b) False

5. The liability for employer to contribute under the Employees' Provident Funds etc. Act, 1952 is 10% of the employees' emoluments.

a) True b) False

6. The maximum contribution that an employee can make to his provident fund account is 10%.

a) True b) False

7. How is EPF Appellate Tribunal constituted?

8. What is its composition?

9. What are its powers?

10. State the priority of payment of PF contribution over other debts.

11. Can employer reduce wages etc of an employee by reason only of his liability for the payment of any contribution to the fund.

12. State whether the following statement is true or false and give reason there for with reference to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
"Employee Provident Fund Appellate Tribunal shall consist of three judges".

Ans:-This statement is false as the Employees' Provident Funds Appellate Tribunal shall consist of one judge in terms of section 7D (2).

13. A charitable or religious trust of old temples are covered by the provident Funds Act.
Ans:-Incorrect, as per the section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

14. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies to "Municipal Councils and Municipal Corporations".

15. The Funds under the Employees' Provident Funds Scheme, 1952 is vested and administered by Central Government.

THE END