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EMPLOYMENT LAW UPDATES

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LABOUR & EMPLOYMENT BYTES

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COMMITTEES FOR DRAFTING SCHEMES UNDER THE SOCIAL SECURITY CODE 2020

The Employees' Provident Fund Organization (EPFO) in its order dated 02.06.2023 has formed committees to develop draft schemes under the Social Security Code 2020. These committees will focus on creating the Employees' Provident Fund Scheme (EPFS), Employees' Pension Scheme (EPS), and Employees' Deposit Linked Insurance Scheme (EDLIS).

The EPF Scheme 2023 committee will draft the Employees' Provident Fund Scheme, while the EPS 2023 committee

and the EDLI Scheme 2023 committee will draft the Employees' Pension Scheme and Employees' Deposit Linked Insurance Scheme, respectively.

The committee members will collaborate to ensure that the schemes align with the Social Security Code 2020. They will have the flexibility to consult internal and external experts for their insights and recommendations during the drafting process.

The objective is to develop comprehensive draft schemes that adhere to the provisions of the Code. The overall coordination of these committees will be supervised by Sh. Chandramauli Chakraborty, ACC(HQ) Legal.

PURE SUPPLY CONTRACT IS STATUTORILY EXEMPT FROM LEVY UNDER THE BOCW ACT

[1]The Maharashtra State Electricity Transmission Company Limited (MSETCL), the Respondent, awarded the petitioner work orders for a total of 26 projects. MSETCL and the petitioner entered into individual agreements for each specific scope of work, including separate agreements for equipment supply, erection, testing and commissioning, and civil works.

A notification was issued by the Labour Department on July 4, 2016, stating that expenses related to design, supply, and transportation would not be subject to the 1% cess imposed by The Building and Other Construction Workers' Welfare Cess Act, 1996 ("BOCW Act"). However, on June 30, 2016, MSETCL issued a circular that is being challenged in the petition. The circular instructed the deduction of a 1% cess from the running account bills, which included bills for the cost of equipment supply.

Subsequently, on January 2, 2017, MSETCL issued another directive that applied to all projects, mandating a deduction of a 1% cess from the total project cost, which included supply agreements, except for the cost of land. Then, on July 27, 2017, the State of Maharashtra issued a correction stating that the labor cess would only be applicable to civil works,

[1] *High Court of Bombay in Writ Petition No. 668 OF 2019*

effective from June 30, 2016. However, on August 4, 2017, the correction was seemingly revoked. The challenge in the petition revolves around the ongoing imposition of a 1% cess on supply contracts.

The Bombay High Court invalidated the imposition of a 1% cess on the design and supply of equipment. Furthermore, the court ordered the release of payments that were unlawfully deducted as the 1% cess on the design and supply of equipment. The respondents were prohibited from deducting 1% of the cess from future payments to the Petitioner if the deduction is related to the cost of designing and supplying equipment.

DELHI HIGH COURT RESTRAINS EPFO FROM TAKING COERCIVE STEPS ON THE BASIS OF THE RECOVERY NOTICES FOR HIGHER PENSION

[2] The petitioners, who are retired employees receiving higher pensions beyond the ceiling limit based on options given by the respondent in 2018/19, have approached the court to challenge a communication issued by the respondent on 20.02.2023. The communication instructed Regional Provident Fund Commissioners to stop the higher pension of those who retired before 01.09.2014 without giving them an option for higher pension prior to their retirement. The petitioners also contest an order dated 01.05.23 that directs them to refund the differential amount received as pension beyond the ceiling limit for several years based on the options, they chose in 2018/19.

The petitioners argued that since they were given the option to choose higher pension by the respondents, which they exercised and continued to receive higher pension based on that option since 2018/19, the respondents cannot reinterpret the decision of the Apex Court in *The Employees Provident Fund Organisation & Anr. Etc. vs Sunil Kumar B. & Ors. Etc.* and reopen their cases. They asserted that their rights had already been finalized, and they have been receiving higher pensions for many years.

The court directed the respondents to maintain the status quo regarding the pension received by the petitioners as of 01.01.2023. The court also restrained the respondents from taking coercive action to recover the differential amount of higher pension received by the petitioners for many years, until the next hearing.

JUDICIAL REVIEW CAN'T BE EXERCISED TO RE-APPRECIATE EVIDENCE IN DEPARTMENTAL ENQUIRY PROCEEDINGS

[3] The Supreme Court while placing reliance on *Deputy General Manager (Appellate Authority) vs. Ajai Kumar Srivastava* said that the Division Bench of the High Court went outside the scope of judicial review by dealing with the matter in a manner as if it was the first stage of the case, namely, the inquiry was being conducted and inquiry report was being prepared. The Supreme Court clarified that during judicial review of departmental enquiry proceedings, the scope does not include reevaluating the entire evidence as one would in reviewing a conviction in a criminal trial.

RAJASTHAN HIGH COURT QUASHES PUNJAB NATIONAL BANK'S DECISION TO COMPULSORILY RETIRE ITS SENIOR MANAGER FOR SIX-MONTH ABSENCE

[4] In the present case the employee was transferred to Alwar from Jaipur by Punjab National Bank (PNB) and due to her family and medical circumstances, she could not join the Alwar Branch. She submitted multiple representations to reconsider her case and cancel her transfer, but this was not accepted by PNB. Therefore, she remained absent unauthorisedly. PNB issued a charge sheet for her conduct of unauthorised absence and after holding an enquiry, the punishment of compulsory retirement was imposed.

Looking at the peculiar facts and circumstances of the present case and looking at the past record of twenty-five years of unblemished service of the employee, the High Court of Rajasthan while exercising the power of judicial review, invoked the doctrine of proportionality and held that the punishment was disproportionate and ordered the reinstatement of the employee.

[2] *Delhi High Court in W.P.(C) 6957/2023; W.P.(C) 7094/2023; W.P.(C) 7138/2023; W.P.(C) 7139/2023*

[3] *Supreme Court in Civil Appeal No. 3663 of 2023*

[4] *High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Civil Writ Petition No. 7612/2015*



J&K HIGH COURT DIRECTS GOVT TO RECONSIDER EMPLOYEE'S CLAIM FOR REIMBURSEMENT OF MEDICAL EXPENSES INCURRED OUTSIDE STATE

[5] The Jammu & Kashmir High Court has delivered a judgment in favor of a contractual government employee, stating that the medical expenses she incurred for her husband's treatment outside the State should be reimbursed. The court emphasized the importance of the government's power to relax rules, highlighting that it should be exercised sincerely. The court further stated that such discretion should be applied in cases where strict adherence to the rules would unfairly burden the individual seeking benefits and directed the government officials to reconsider the claim made by the employee.

ESIC CLARIFICATION REGARDING IMPLEMENTATION OF AADHAAR SEEDING OF INSURED PERSONS

On May 25, 2023, the Employees' State Insurance Corporation (ESIC) issued a clarification regarding the implementation of Aadhaar seeding for insured persons. The process can be carried out either through the IP portal or the employer portal. An online provision has been developed for the seeding and authentication of Aadhaar numbers, allowing existing employees to voluntarily link their Aadhaar numbers for themselves and their family members. The verification is done through an OTP received on their mobile from UIDAI.

Since the insured persons/beneficiaries/employees have already given preliminary consent to seed their Aadhaar numbers through the online module, minor changes can be approved by the Branch Office Manager based on Aadhaar-based change requests.

However, if there are multiple discrepancies in demographic details such as name, father's name, gender, and date of birth, the Branch Office Manager may return the Aadhaar-based change request with the specific mention of the observed discrepancies. The manager is responsible for conducting necessary inquiries with the employers/employees and resolving the issues related to demographic details changes within three days. They are also required to facilitate Aadhaar seeding at their own level.

COMPANIES REGISTERED UNDER THE ESIC THROUGH THE MCA PORTAL WILL HAVE TO DECLARE THEIR STATUS WITHIN SIX MONTHS OF THE REGISTRATION

Employees' State Insurance Scheme's circular dated 02.06.2023, introduced the dormant option in the employer's portal. The companies registered under ESIC through the MCA portal will have to declare their status within 6 months of the registration to avoid defaulter action. Before the end of the "inactive mode" the companies registered under ESIC can further extend the "inactive mode" period for six months and can continue to extend in a similar manner as per the status of the company. The option of declaring "inactive mode" will not be available to the employer after the expiry of six months.

NEW NOTIFICATION ISSUED BY HARYANA LABOUR WELFARE BOARD

According to the notification issued by Haryana Labour Welfare Board on 27th June 2023, every employee has to contribute to the EPF every month an amount equal to 0.2% of his salary or wages or any remuneration, the maximum threshold for which has been increased to INR 31. The Notification further states that the employer must contribute twice the amount contributed by the employee.

EPFO ON HIGHER PENSION

(i) EPFO Issues Instructions for Joint Requests Under Employee Provident Fund Scheme, 1952

The EPFO issued a circular on June 2, 2023, providing instructions for the submission of joint requests under the EPF Scheme. The circular clarifies that employees whose monthly pay exceeds the statutory wage ceiling can voluntarily enroll in the EPF Scheme and contribute based on their actual higher pay. The circular outlines the process for making joint requests and specifies that employers must submit the requests digitally to the jurisdictional Regional Office.

[5] High Court of Jammu and Kashmir in SWP No. 1062/2016

The Regional Office will process the applications promptly and notify both the employer and the employee within seven days regarding their eligibility for contributing based on actual higher pay or enrollment in the EPF Scheme. The circular also clarifies that the instructions apply to new employees enrolling in the scheme and existing members who may wish to contribute based on actual higher pay in the future. Existing members can submit the joint request and employer's undertaking at the time of final claim settlement if they are already contributing based on actual higher pay.

(ii) Computation of Pension Method – Filing of Applications for Validation of Option/Joint Option

The Employees' Provident Fund Organisation (EPFO) has released a circular dated June 1, 2023 that explains the process for validating options and computing pensions. The circular covers various scenarios based on the date when the pension commences and emphasizes the significance of the average monthly pay received during the contributory period of service. It provides specific time frames for calculating pensions, which is important for individuals who are seeking validation of options and want to understand how their pension amount will be determined.

(iii) EPFO asks officials to stick to the timeline on joint option applications

On June 2, 2023, the Employees' Provident Fund Organisation (EPFO) released a circular to emphasize that each application for the validation of a joint option will be thoroughly reviewed in a prompt manner. The circular also outlined that within 20 days of receiving the application, a demand letter or communication will be issued to the employer if any additional proof, evidence, or corrections are required for the validation of the joint option. This step was taken after the EPFO observed delays in issuing demand letters or communications for cases that were claimed to have been reviewed, as mentioned in the circular.

(iv) EPFO notified regarding the Applications for Validation of Option/ Joint Options – Proof of joint option duly verified by the employer and the list of admissible documents

The EPFO issued a circular on June 14, 2023, regarding the implementation of the Supreme Court judgment dated November 04, 2022, related to applications for the validation of options and joint options under the Employees' Provident Fund Scheme, 1952 ("EPF Scheme"). The following procedure shall be followed namely:

(i) Field Offices will verify that:

- a) Employer share of PF contribution has been remitted on employee's pay exceeding the prevalent statutory wage ceiling from the day the payment exceeded the wage ceiling or 16.11.95 whichever is later till date/ till the date of retirement or superannuation as the case may be
- b) Administrative charges payable by the employer have been remitted on much higher wages.
- c) Provident Fund account of the employee has been updated with interest as per EPF scheme on the basis of such contribution received, and
- d) Any of the following documents have been submitted along with applications for validation of options / joint options as proof of joint option and permission.
 - Wage details submitted by the employer along with applications for validation of option/joint options
 - Any salary slip/letter from the employer authenticated by the employer
 - Copy of joint request and undertaking from the employer
 - Letter from the PF office issued prior to November 04, 2022, indicating PF contribution on higher wages.

(ii) The applicants who qualify under the stipulations placed above and are already contributing/ have contributed till retirement/superannuation on actual (higher) pay, if they have not submitted their joint requests and undertaking of the employer, can submit the same at the time of final claim settlement through



their last employer. Joint request and undertaking of employer for permission can be submitted by pensioners/members any time before the grant of pension on higher wages in accordance with the decision of Hon'ble Supreme Court.

(v) EPFO extended deadline for applying for higher pension for members

The Employees' Provident Fund Organization (EPFO) further extended the deadline for filing applications to opt for a higher pension until July 11. The EPFO stated that this additional extension aims to address any difficulties faced by eligible pensioners or members. The EPFO has also introduced an online facility for submitting applications for the validation of options or joint options for a higher pension based on higher wages. The timeline for submitting wage details of pensioners/members by the employers has been extended by three months till September 30, 2023.

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