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Background

In the case of *Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidhyamandir and Others (Vivekananda)*, the ambit of the definition of ‘basic wages’ as per Section 6 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (“**EPF Act**”) was widened. According to the judgement, it was clarified that the definition extends to all allowances which are uniformly, necessarily and ordinarily paid to all employees generally or all employees in a particular category (Principle of Universality).

Due to widening of the scope of the aforesaid definition, the following two problems were faced post the judgement:

- (i) retrospective applicability of the new threshold of ‘basic wages’; and
- (ii) issuance of widespread inquiry notices by EPFO field officers, for evaluating the wage structures of the establishments retrospectively.

EPFO Circular post Vivekananda judgement

After the Vivekananda judgement, a notice was issued by the Head Office of Ministry of Labour and Employment, Government of India dated March 14, 2019. Through the said notice, the Ministry directed that *“thereafter, this order of Hon’ble Apex Court is circulated to all concerned for information, utilizing this judgement while defending similar cases and taking necessary action keeping the aforesaid judgement of the Hon’ble Supreme Court.”*

Through the EPFO circular, the judgement was made applicable to all the similar cases

wherein the widened ambit of ‘basic wages’ was to be taken into consideration while computing the basic salary under the Provident Fund Scheme.

Subsequently, due to lack of clarity concerning the retrospective or prospective effect of the judgement of the Vivekananda case, several EPFO field officers launched a fishing expedition and issued inquiry/inspection notices to the employers proposing inspection of records of the previous years for ascertaining the wage structure as well as the allowances which may have been excluded from ‘basic wages’.

Thereafter, a review petition was also filed by Surya Roshni Limited (one of the appellants) against the judgement of the Vivekananda case which was dismissed by the Hon’ble Supreme Court on August 28, 2019. The petition was rejected on the grounds that the court did not find any justifiable reasons to entertain the review petition.

Recourse to the Employers

The only recourse that the employers have is the notice passed by the EPFO on August 28, 2019. Given that the law does not stipulate any limitation period, the employers remain exposed to any past non-compliances, unless the EPFO clarifies its position. Although the EPFO notice does not delve into the issues of retrospective or prospective operation of the judgement, it brings out the intention of the EPFO which is, to not to undertake roving inquiries into the wage structures of establishments, when there is no credible basis for proceeding against them.

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At present, there is no limit to the number of years which can be subject to an investigation into past defaults by the Provident Fund Authorities. Further, the EPFO Notice may be read with the EPFO's circular dated June 26, 2014, wherein it has provided for certain guidelines to be considered for conducting any optional inspection. As per the EPFO Circular dated June 26, 2014, the cases which warrant an optional inspection by the authorities should be the ones that indicate a drop in remittance/membership as compared to the last quarter. Further, any such inspection should not be repeated in the same year as far as possible.

Way Forward

The Ministry of Labour and Employment, Government of India has circulated a draft Bill vide its letter dated August 23, 2019, proposing certain amendments to the EPF Act. The draft Bill will amend the following and which will also bring clarity towards initiation of inquiries.

a) New definition of wages:

The draft Bill proposes to replace the highly debated definition of 'basic

wages' under the EPF Act with a new definition of 'wages' which is aligned with the definition prescribed under the Code of Wages, 2019. This appears to be an attempt to put an end to the ambiguities concerning the inclusion of allowances and certain other wage components for computation of the Provident Fund contributions.

b) Limitation on proceedings:

Presently, the EPF Act and the schemes thereunder, do not contemplate any limitation period for (i) initiation of proceedings under the EPF Act to determine its applicability to different establishments; or (ii) to determine amounts due from the employers under various provisions of the EPF Act. The draft Bill proposes to introduce a limitation period of five (5) years from the date on which the provident fund contributions/deficit amounts have been alleged to be due from the employer.

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Source

The Supreme Court of India (<https://main.sci.gov.in/>)

The Employees' Provident Fund Organisation, India (https://epfindia.gov.in/site_en/index.php)

The Ministry of Labour and Employment, Government of India (<https://labour.gov.in/>)

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