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UCS POV

Shaiju Mathew, Chief Operating Officer

The Honourable Supreme Court passed its judgment in the case of the Employees' Provident Fund Organisation (EPFO) & ANR. ETC. vs. Sunil Kumar B. & ORS. ETC. on 4th November 2022. This judgement upholds the right of the existing members under the Employee's Pension Scheme (EPS) to opt for higher pension by contributing to the EPS on the uncapped wages. The Court has determined that an individual who has made PF contributions on higher/uncapped wages has the right to earn higher pension.

EPS is a pension scheme for the employees of the organized sector. This pension scheme gives a guaranteed monthly pension after one's retirement. The EPFO manages the pension account of all those who are contributing to the EPF including private trusts. The members will receive monthly pension after attaining the age of 58 on the basis of their average of the last 60 months Pension wages and the number of years of PF membership i.e. **Pension Wage (EPS wage) X no. of years of membership/70.** Considering the existing capped pension wage (Rs. 15,000/-), an employee who has been a member of the PF for the past 35 years and is currently retiring or attaining the age of 58 shall receive a pension of Rs. 7,500/- per month (Rs. 15,000 X 35 years/70 = Rs. 7,500/-) even though the individual had contributed PF on higher/ uncapped wages during their employment. EPF contributions are payable on the prescribed maximum wage ceiling of Rs. 15,000/- (w.e.f 1st Sept 2014) by the employee and the employer. To pay contribution on higher wages, a joint request from the employee and the employer is required [Para 26(6) of EPF Scheme]. In this case, both the employer and the employee will have to pay equal contribution on such higher wage and the employer is also required to pay administrative charges on the higher wage.

As per the Supreme Court judgment, the employees who retired before 1st September 2014 and contributed PF on higher/uncapped wages are also to be benefited with higher pension scheme. In view of the judgment, the EPFO has introduced an online application for higher pension for those employees who have retired before 1st Sept 2014 (attained the age of 58), provided that they have contributed PF on higher/uncapped wages during their employment (as per Para 26(6) of EPF Scheme) and are covered under the EPS. The pension wage ceiling before 1st September 2014 was Rs. 6,500/- and Rs. 5,000/- respectively and the employees who have already started receiving pension (who have attained the age of 58 prior to 1st September 2014) will be able to apply for higher pension through https://unifiedportal-mem.epfindia.gov.in/memberinterface/. by mentioning the Pension Payment Order number (PPO).

The EPFO has not yet introduced the higher pension scheme application process for the existing PF Members as well as for those who have retired after 1st Sept 2014. This is a voluntary scheme for the employees and those who are opting for the scheme can submit a direct application to the EPFO in accordance with the guidelines. If employees choose the higher pension plan, there is no financial impact on the employer and no obligation on the part of the employer under the aforementioned scheme.

ESIC: Penal Interest Must Be Paid For Entire Period Under Default

Defaulting employers will have to pay penal interest on late or inadequate contributions to the Employees' State Insurance Corporation (ESIC) for the entire period under default. Following a Supreme Court ruling that the period of interest cannot be reduced or restricted, the ESIC has asked field offices to ensure strict compliance. The Supreme Court has held that the section 39 (5) (a) of the ESI Act by which ESIC is entitled to claim interest from the date of contribution due and payable till the actual payment," the corporation said in a recent circular. The case pertains to a dispute between ESIC and Nitinbhai Vallabhai Panchsara on claiming of contribution and interest on delayed payment of ESI contribution. The interest demand was challenged by the employer at the ESIC Court in Rajkot where the court partially accepted the application of the employer and held that ESIC should recover interest only for two years. ESIC then filed an appeal with the Gujarat High Court, which also went against it.

Finally, it filed a Special Leave Petition in the Supreme Court which in its ruling in November 2022 held that the employer is liable to pay interest under section 39 (5) (a) from the date of contribution due till the actual payment. Under the section, employers have to pay simple interest at 12% or at a higher rate as may be specified on the delayed or due contribution. The ESI scheme provides medical care and cash benefits to workers in case of injury, sickness, maternity and death or disability due to an employment related injury. It covers all establishments with 10 or more workers with a wage cap of `21,000. Employers have to contribute 3.25% of the wages payable while employees contribute 0.75% of the wages. The contribution has to be paid by the employer within 15 days of the last day of the month.

Experts said the Supreme Court ruling has maintained the position of the law that penal interest must be paid for the entire period during which a shortfall was assessed. "The ESIC circular has also clarified this issue basis the ruling and said that officers cannot be selective in asking for the entire penal interest in case of any shortfall in contribution by employers," said Anshul Prakash, Partner, Employment Labour and Benefits, Khaitan & Co.

(Source : FinancialExpress)

Will Employees Receive Gratuity If Their Company Goes Bankrupt? Know Your Rights

To prevent employee retirement funds from being lost in corporate bankruptcies, Indian corporations may be required to establish a separate fund to pay employee gratuities. This recommendation was made in a recent report, which was sent to the finance ministry after a research that the government had commissioned. An official from the finance ministry said, "We will study the recommendations. The suggested solution would require businesses to routinely set aside money to cover their gratuity liabilities, which would ringfence the retirement contributions of employees from corporate festivities."

Companies with more than 10 employees are required to provide a gratuity equal to half a month's basic pay for each year of service that has been completed. Workers who have served five years of service in the company are liable for the pay. Companies pay this amount to employees when they leave their jobs, whether it's due to retirement or another reason, as and when necessary. But this pay, as one leaves, greatly increases the danger that employees would lose their benefits in the event if the company goes bankrupt. The high-profile Satyam affair brought unpaid gratuity liabilities into sharp focus.

The assets of employees should be held under a separate trust under the trust law, according to a report by the Noida-based Invest India Economic Foundation (IIEF) and the US-based company AECOM. The Asian Development Bank funded the study. When it comes to provident fund payments, there is a sufficient system in place to guarantee that savings are safeguarded through an arms-length system and stringent legal guidelines. There is a Gratuity Act that aims to protect such investments, but gratuity payments are not covered by this law. The report now urges employers to make disclosures legally required.

(*Source : News18*)

EPFO issues circular on higher pension, clarifies which employees are eligible and how to apply

The Employees Provident Fund Organisation (EPFO) has issued a circular on December 29, 2022, to comply with the Supreme Court's direction on higher pension for eligible employees. The circular issued lays down the eligibility conditions for employees to get higher pension and how they can apply for it online.

Who is eligible to receive higher pension as per EPFO?

As per the circular, only those employees are eligible who contributed to higher wages as mandated under the Employees' Provident Fund (EPF) Scheme and have exercised their option for higher pension prior to their retirement but their request was explicitly denied by the EPFO.

Hence, the following pensioners can apply for higher pension:

a) The pensioners who as employees had contributed on salary exceeding the then prevalent wage ceiling of Rs 5,000 or Rs 6,500; and
b) Exercised joint option under the Employees' Pension Scheme (EPS) of the pre-amendment scheme while being members of EPS-95, and
c) Their exercise of such option was declined by the EPFO.

Puneet Gupta, Tax Partner, People Advisory Services, EY India, says, "Employees who were members of the Employees' Pension Scheme as on September 1, 2014 and did not opt for higher pension earlier should be eligible for higher pension as per Para 44(iv) of the Supreme Court ruling dated November 4, 2022. As per the ruling, such employees should opt for higher pension by March 3, 2023 (4 months from the ruling). However, the circular dated December 29, 2022 issued by the EPFO is silent on the procedure to be followed by such employees to avail higher pension benefit. It is likely that EPFO may issue different circular to provide instructions on how these employees can avail the higher pension benefit."

Who are not eligible for a higher pension from EPFO?

The circular has explicitly clarified that certain employees will not be eligible for higher pension after the Supreme Court order dated November 4, 2022:

The employees who had retired prior to September 1, 2014, without exercising any option under paragraph 11(3) of the pre-amendment scheme have already exited from the membership thereof. (Therefore) They would not be entitled to the benefit of this judgement. The employees who have retired before September 1, 2014, upon exercising option under paragraph 11(3) of the 1995 scheme shall be covered by the provisions of paragraph 11(3) of the pension scheme as it stood prior to the amendment of 2014.

How eligible pensioners can apply for higher pension

The eligible pensioners are required to visit their concerned regional EPFO office along with a duly-filled-in application form and specified documents to apply for a higher pension.

The process of applying for a higher pension at the regional EPFO office is as follows:

A) The request will be made in such form and manner as may be specified by the commissioner
B) The application form for validation will contain the disclaimer as ordered in the aforesaid government notification.

C) In case of share requiring adjustment from provident fund to pension fund and if any, re-deposit to the fund, the explicit consent of the pensioner will be given in the application form.
D) In case of transfer of funds from exempted provident fund trust to pension fund of EPFO, an undertaking of the trustee shall be submitted. The undertaking shall be to the effect that due contribution along with interest-upto the date of payment, will be deposited within the specified period.

Further circulars will be issued in regard with how required amount will be deposited for higher pension, says the circular dated December 29, 2022.

Documents required to apply for higher pension

A pensioner is required to submit the following documents for evidence and further processing:
a) Proof of joint option under Para 26(6) of the EPF scheme duly verified by the employer; and
b) Proof of joint option under the proviso to erstwhile Para 11(3) duly verified by the employer; and
c) Proof of remittance in provident fund account on higher wages exceeding the prevalent wage ceiling of Rs 5,000/Rs 6,500; and
d) Proof of remittance in pension fund on higher wages exceeding the prevalent wage ceiling of Rs 5,000/Rs 6,500, if any, and
e) Written refusal of APFC or any other higher authority of EPFO to such request/remittance.

What will happen once the application form is submitted

According to the circular, once the eligible pensioner submits the application form, the EPFO authority i.e., the Regional PF commissioner will deal with it as follows:

Each application will be registered and digitally logged. The receipt number will be provided to the applicant. The application will land into employer's login whose verification with e-sign will be essential for further processing.

RPFC will cause each application to be converted into e-file, as far as, possible. The concerned dealing assistant will examine the papers including the note on receipt of due amount in the pension fund, and mark the case to the section supervisor/account officer. The concerned SS/AO will mark out any discrepancies and send it with the rule position to AFPC/RPFC-II who after due examination will put the case to Officer-in charge of Regional Office. The Officer in-charge shall examine each case of pension on higher salary and dispose it by passing a speaking order that shall be intimated to the applicant through e-mail/post. Efforts will be made to intimate them through telephone/SMS.

If an applicant has any grievance, then a complaint can be raised on EPFiGMS after submission of his request form and payment of due contribution, if any.

(*Source: EconomicTimes*)

Sexual harassment case won't be quashed even if internal complaints committee fails to complete inquiry within time under POSH Act: Delhi HC

While hearing a chartered accountant's plea seeking the quashing of proceedings of the internal complaints committee in a sexual harassment case, the Delhi High Court recently held that such proceedings will not be quashed even if the panel fails to complete the inquiry within 90 days as prescribed in law.

A single judge bench of Justice Vikas Mahajan in its recent decision held "there was no substance" in the chartered accountant's contention that if the inquiry proceeding is not concluded within a period of 90 days, the same will be vitiated.

The bench also observed that such complaints containing allegations of sexual harassment "deserve to be treated with a certain amount of seriousness and responsibility".

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"The petitioner has not pointed out any prejudice caused to him on account of delay. It is not the case of the petitioner that the delay is attributable to respondent no. 3 (complainant). I am prima facie of the view that the complaint of sexual harassment and the inquiry proceeding emanating therefrom cannot be quashed merely for the reasons that the internal complaints committee (ICC) failed to complete the inquiry within the timeframe given in Section 11(4) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (POSH)".

The bench also observe such complaints containing allegations of sexual harassment "deserve to be treated with a certain amount of seriousness and responsibility" and have to be inquired into and "taken to their logical conclusion" in the interest of both the complainant as well as the person against whom the allegations of sexual harassment have been levelled. The petitioner had sought an interim relief challenging a second sexual harassment complaint filed by the complainant under POSH Act. According to him, the second complaint filed on October 12, 2022, related to the same alleged incident which was already the subject matter of an initial complaint filed on June 3, 2022. He had also challenged the notice received by him regarding the hearing to be conducted on January 6, 2022, in the second complaint.

The CA contended two proceedings for the same incident are not permissible in law. Relying on Section 11(4) of the POSH Act, he argued the inquiry had to be completed within a period of 90 days and that in his case the period had lapsed from the date of the first complaint of June 3, 2022, hence the entire proceedings of the ICC are vitiated. However, the high court bench noted the contents of the two complaints were identical and about the same incident. "Prima facie, I find force in the contention of the learned counsel for the respondents that the inquiry which has been initiated by the Internal Complaints Committee is in fact, with regard to the complaint dated 03.06.2022 and the hearing already held on 23.09.2022, and the one proposed to be held on 06.01.2023, are part of the same inquiry. There is no question of the petitioner being subjected to two separate enquiries," it said.

The court observed the ICC hearing held on September 23, 2022, was a preliminary one in which the efforts for conciliation were possibly made by it in terms of Section 10 of the Act. Thereafter, a second hearing was fixed on January 6, 2022, which is "part of the same inquiry proceeding which have been initiated pursuant" to the June 3, 2022, complaint, the court noted. The Institute of Chartered Accountants of India had contended the complainant had initially sent her complaint through email on June 3, 2022, and she submitted hard copies of the same complaint to ICC on October 12, 2022, which is a requirement under the POSH Act.Rejecting the CA's prayer for interim relief for quashing the proceedings, the high court noted that in the backdrop of the given case the provisions of Section 11(4) of the POSH Act "cannot be said to be mandatory".

(Source : IndianExpress)

EPFO's plan to review high pension payout cases sparks concern

The latest circular by the Employees' Provident Fund Organisation (EFPO) on reopening cases of higher pension for those who retired prior to September 2014 has evoked concern among sections of such pensioners that they may lose the benefit which they have been enjoying for the past five years or so. The circular, issued recently and addressed to the regional offices of the EPFO, explained why the issue of higher pension had to be reopened. The cases of employees who retired prior to September 1, 2014 without exercising any option under paragraph 11(3) of the pre-amended Employees' Pension Scheme, 1995 (EPS-95) and were granted pension on higher wages "need to be re-examined", it said.

It was for this purpose that the payment of higher pension should be stopped. In other words, it had to be ensured that such pensioners "are not given higher pension from the month of January 2023", the circular said, adding that their pension would now be revised based on the salary ceiling of ₹5,000 or ₹6,500.

In support of its move, the EPFO cited certain paragraphs of the Supreme Court's judgment. Paragraph 11(3) dealt with the matter of maximum pensionable salary. It also talked of an arrangement for employees and employers to give a joint option for allowing to the Pension Fund the remittance of a proportionate portion of the employers' contribution on wages higher than the statutory ceiling The second feature of the paragraph was removed through an amendment to the Pension Scheme, effective September 1, 2014.

'EPFO high-handedness'

Alleging "high-handedness" of the EPFO in issuing such a circular, Parveen Kohli, activist for pensioners' rights, said he feared that the latest move would affect thousands of pensioners. "The circular is distorting the facts and suppressing the details. The Supreme Court upheld the EPS-95 in 2003 in OTIS Elevator case. The pension of 24,672 persons was revised later. There are other pensioners who got favourable orders from various courts subsequently. All these persons are facing the prospects of recovery by the EPFO, if one is to go by the latest circular," Mr. Kohli said.

The EPFO's circular said that before revising any pension entitlement, an advance notice should be issued to the pensioner so that he or she had an opportunity to prove that he or she had availed himself or herself of the option under paragraph 11(3) of the EPS before his or her retirement prior to September 1, 2014.

"Further, any recovery which may arise after such revision should be done in a staggered and persuasive manner. The RPFC [Regional Provident Fund Commissioner]-I/ officer in charge of the region will be the competent authority to re-determine the pension entitlement and initiate recovery, if any," the circular said. It added that the Supreme Court's direction in the R.C. Gupta case pertained to such employees who had contributed on higher wages under paragraph 26(6) of the EPF Scheme, 1952 [joint consent to be provided by employer-employee for permitting contribution on the employee's higher pay] and had further exercised their option under 11(3) of the EPS-1995 prior to their retirement. "Meanwhile, in order to stop over payment, if any, in respect of employees who had retired prior to September 1, 2014 without exercising any option under Para 11(3) or the pre-amended scheme, and have been granted pension on higher wages, their cases need to be re-examined to ensure that they are not given higher pension from the month of January 2023 onwards. Pension in such cases may be immediately restored to pension on wages up to the ceiling of ₹5,000 or ₹6,500," the circular said, asking the regional offices to take "utmost care" to identify such cases where higher pension was granted on account of the judgment of any court.

(*Source : TheHindu*)

EPFO portal offers link to opt for higher pension

Implementing the recent Supreme Court order on higher provident fund pensions, the Employees' Provident Fund Organisation (EPFO) has made a provision in the member's portal so that retired workers can opt for higher pension. The EPFO has started taking registration requests from employees for application form for validation of joint options with the employers. The option, at the moment, will be available for employees who had retired before September 1, 2014. They should have also exercised joint option under para 11(3) of the Employees' Pension Scheme (EPS) prior to September 1, 2014. The employee should enter the Pension Payment Order, Aadhaar number, name, date of birth in the application form, which should be as per the EPFO records. "Member should have a valid mobile number linked as per UIDAI records," the direction adds. A source in the EPFO said the website had stopped functioning properly with members trying to add their details. There are indications that the EPFO may come up with an updated version of the link. The EPFO had issued guidelines earlier on the matter, but both the pensioners and the EPFO employees had sought further clarity on the guidelines. The EPFO, however, has not given any specific guidelines on updating details in the new window on the members' website.

(*Source : TheHindu*)

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