

Insight on 7A inquiry under Employees' Provident Fund Act & Miscellaneous Provisions Act, 1952

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- 1. Proceedings u/s 7A for Determination of Dues from the Employer or the Disputes related to PF Compliance**
- 2. Proceedings u/s.14B and 7Q for Damages and Interest**

1. EPF & MP Act, 1952

The Employees' Provident Funds & Miscellaneous Provisions Act 1952, is a social security legislation and has been enacted to promote savings to salaried employees and to provide financial security after retirement.

2. Purpose/object of the Act.

With a view of making some provisions towards old age benefit of industrial worker after he has retired from employment or if he becomes permanent disable and in case of his death to his dependants, the Government felt the necessity of introducing such a scheme whereby the object could be fulfilled. It is at this point of time that the Act viz. Employees' Provident Funds Act, 1952 was introduced with the above object. Initially it was extended to certain classes of industries. The Act has undergone major changes keeping in view the changing industrial scenario and to provide a pensionary benefit and insurance coverage to the employees for death whilst in service, two schemes were introduced viz. Family Pension Fund Scheme, 1971 and Employees' Deposit-Linked Insurance Scheme, 1976. The Act is now known as Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

The Act is applicable to every factory as specified in Schedule 1 and establishment as notified by Central Government from time to time and having 20 or more employees. The Act and Scheme can also be applied voluntarily even if factory or establishment has employment strength less than the required number.

The Employees drawing salary/wages upto to Rs. 6,500/- are presently governed under the provisions of the Act. The employees drawing salary above Rs. 6,500/- can also be brought under the purview of the Act at the discretion of the management and by furnishing a joint undertaking to the P.F. authority. The Employees covered under the Act enjoy the benefits of Social Security in the form of un-attachable, un-withdrawable (except in restrictive circumstances such as withdrawal on account of buying a house, marriage of self or children, advanced education, to incur hospital expenses etc.) financial nest egg to which the employees and employer contribute equally. This sum is payable on leaving service, retirement or death.

Besides Provident Fund, other benefit includes Employees' Pension Scheme, 1995, and Employees' Deposit-Linked Insurance Scheme, 1976. The Employees' Pension Scheme is a survivor, old age and Disablement Pension Scheme. The earlier Family Pension Scheme, 1971, offered only one type of benefit viz. Survivor Benefit i.e. Payment of pension to widow/widower on death of the member while in service.

Employees' Deposit Linked Insurance Scheme, 1976 provides insurance coverage to the member of the provident fund for death while in service. The nominee of the deceased member is entitled for a lumpsum amount of not exceeding Rs. 60,000/- for the present, depending upon the P.F. balance and length of service.

The Act also provides for exemption from the provision of the Act so as to enable the management to constitute its own P.F. and provide the above-mentioned benefits.

In short the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, has inculcated the habit of compulsory savings in the employees & provided for the future of the member & its family in case of unforeseen & emergent situation.

In order to enforce the purpose of the Act and scheme correctly and effectively the PF authorities have been vested with certain stringent penal provisions.

3) **Nature and Scope of inquiry u/s.7-A;**

Sec.7-A: Determination of Moneys due from employer

“(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may by order,-

- (a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and
- (b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be.

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

- (2) The Officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely-
- (a) Enforcing the attendance of any person or examining him on oath.
 - (b) Requiring the discovery and production of documents
 - (c) Receiving evidence on affidavit.
 - (d) Issuing commissions for the examination of witnesses
- and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196, of the Indian Penal Code.
- (3) No order shall be made under sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case.
- (3-A) Where the employer, employee or any other person required to attend the inquiry under sub-section(1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.
- (4) Where an order under Sub-section (1) is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the

inquiry was held the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry.

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation : Where an appeal has been preferred under this Act against an order passed ex-parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex-parte order.

- (5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party. “

On perusal of the above said provision it shall be observed that the inquiry held u/s.7A of the Act has all the judicial powers as are vested in the Court under the Code of Civil Procedure Act, 1908.

Sec.7-A is a quasi-judicial Proceeding. The authority who is heading the inquiry has the judicial powers as are vested in the court under the Code of Civil Procedure, 1908.

As the authority who is heading the inquiry and who passes an order U/s.7A of the EPF & MP Act, 1952 though it is not termed as a Judge but he falls within the definition of Section 19 of Indian Penal Code as well as Section 2 of the Judges

(Protection) Act, 1985. Since he is empowered by law to determine the amount and decide dispute and proceeding is a legal proceeding in view of Sec.7A(2) which in terms lays down that the said enquiry shall be deemed to be a Judicial provision and the authority shall have all the powers which are vested in Court under the Code of Civil Procedure for trying the suit and also that the said enquiry is deemed to be the judicial within the meaning of Sections 193 & 228 for the purpose of Section 196 of Indian Penal Code.

It is also observed that the members of EPILPA are finding it difficult to appear before the Quasi Judicial Authority on the ground that they are not an Advocate.

I, therefore, give below the procedural guidelines for appearing before the Quasi-Judicial Authority and the definition of Quasi-Judicial for your perusal which will Act as a torch bearer to our member, while appearing before the Quasi Judicial Authority.

“The below Procedural Guidelines are set out for Quasi-Judicial Authority by the Hon’ble High Court of Bombay in the matter of Smt.Savitri Chandrakesh Pal V/s. State of Maharashtra;

17. This Court in exercise of powers conferred under Articles 226 and 227 of the Constitution of India prescribes the following procedure to be adopted by quasi-judicial authorities including the Ministers, Secretaries, officials and litigants while hearing and determining appeals, revisions, review applications and interim applications etc.:

(1) Memo of appeal or revision, review and or any application shall specifically mention under which enactment and/or under what provisions of law the said appeal/ review/ revision or application is filed.

- (2) The appellant/ applicant shall give a synopsis of concise dates and events along with the memo of appeal or revision.
- (3) The appeal, revision and/or application shall be filed within a period stipulated under the law governing the subject from the receipt of the order/ decision which is impugned in the above matter. In the event of delay, it should only be entertained along with application for condonation of delay.
- (4) At the time of presentation of the appeal, review or revision, the applicant shall, if, filed in person, establish his identity by necessary documents or he shall file proceedings through authorised agent, and/or advocate.
- (5) The application shall be accompanied by sufficient copies for every opponents/ respondents and also supply 2 extra copies for the authorities.
- (6) For issuance of summons to the opponents/ respondents, court fees/ postal stamps of sufficient amount shall be affixed on the application form/ memo of appeal or revision as the case may be.
- (7) In addition to service through the authority, appellant/ applicant may separately send the additional copies to each of the opponents/ respondents by registered post acknowledgement due and may file affidavit of service along with evidence of despatch. The postal and acknowledgment alone should be treated as evidence of service in the event of service through postal authority.
- (8) In the event of an urgency of obtaining an interim relief like stay, injunction/ other interim order or direction or status-quo etc, a specific case of urgency should be made out in the application,

which the authority may entertain subject to the brief reasons recorded. The said order shall also be communicated immediately to all the effected persons. The proof of timely despatch of the Registered A.D.s and all the acknowledgments shall be separately maintained.

- (9) If there is real urgency, the concerned authority may grant ex parte interim/ ad-interim relief for the reasons to be recorded for a particular period only within which time the service on the concerned opponents/ respondents shall be effected. Appellant/ applicant should file affidavit of service, if such party requires early hearing or continuation for interim relief or of an appeal, revision or review.
- (10) The competent authority shall also communicate the next date of hearing to all the parties along with time and place and shall, as far as possible, adhere to the said date and time of hearing.
- (11) The concerned official in every department should be asked to remain present at the time of hearing and assist the concerned authority in the matter.
- (12) Reasonable sufficient time be provided between the date of receipt of notice and the actual date of hearing. If any party is unable to remain present at the time of hearing for a sufficient cause, one further opportunity should be given to such party for hearing.
- (13) The authority hearing quasi-judicial matters shall duly fix a date, time and venue for such hearing. Such authority shall refrain from interacting with third party during the course of hearing either in

person or on phone and shall not do any act which would tend to affect or prejudice fair hearing.

- (14) A speaking order shall be passed by the authority hearing the matter as early as possible after the hearing is concluded and, as far as possible, within a period of four to eight weeks from the conclusion of the hearing, on the basis of the record before it as well as the submissions made at the hearing. The order must contain reasons in support of the order.
- (15) The authority shall not receive information or documents after the hearing is concluded and/or shall not pass the speaking order on the basis of such documents and/or information unless such material is brought to the notice of the parties to the proceedings following rules of natural justice.
- (16) The order passed by the quasi-judicial authority on the hearing shall be forthwith communicated to all the parties by Registered A.D.
- (17) No application or request or prayer from the political worker, Member of Legislative Assembly, Member of Parliament or third party shall be entertained in the quasi-judicial proceedings unless such person is a party respondent or intervener in the proceedings.
- (18) The order pronounced shall be communicated to the parties immediately.
- (19) Record of hearing shall be meticulously maintained in a separate Roznama.

- (20) The notings of concerned officials/ law assistants to assist the authority shall include only content of facts and legal provisions along with case laws, if any.
- (21) The notings made by the law officials/ concerned officials shall not be in the form of order.
18. In addition to the above guidelines, the quasi-judicial authorities shall also follow the parameters laid down by this Court in the case of Lokmanya Nagar Priyadarshini v. State of Maharashtra, Maharashtra 2007 (1) Bom.C.R. 929, which read as under:

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- "(a) While considering the stay application, the authority concerned should at least briefly set out case of the applicant/ appellant, as the case may be.
- (b) While granting the ex parte order, it should be granted for a shorted duration with short notice to the opponent(s).
- (c) If ex parte stay is to be granted, then the authority passing the order should specify the reasons in short for grant of ex parte order.
- (d) The Authority passing the order should,
- (i) record its findings as to whether or not a prima facie case is made out with short reasons in support of the finding;
 - (ii) record its finding as to in whose favour balance of convenience lies, and

(iii) record its finding whether non-grant of interim relief would cause any prejudice to the person seeking interim relief.

(e) The ingredients at (d) (i) to (iii) should be discussed and positive finding should be recorded while granting or refusing to grant interim relief."

The above said Judgement is not related to PF/ESIC Act, but since the subject matter is relevant, we are borrowing the contents from the said Judgement on the ground that;

- (1) The procedural guidelines are prepared by forming amicus curiae (friend of the court, one who voluntarily or on invitation of the court, and not on the instructions of any party, helps the court in any judicial proceedings) by Hon'ble High Court of Bombay and the same has been part of the above said Judgement.**
- (2) The said guidelines are pertaining to appearance before the quasi-judicial authority and which is more relevant to us.**

Definition of Quasi-judicial –

In England quasi-judicial belongs to the administrative category and is used to cover situations where the administrator is bound by the law to observe certain forms and possibly hold a public hearing but where he is free agent in reaching the final decision. If the rules are broken, the determination may be set aside, but it is not sufficient to show that the administration is biased in favour of a certain policy, or that the evidence points to a different conclusion."

Sharing the qualities of and approximating to what is judicial, essentially judicial in character but not within the judicial power or function nor belonging to the judiciary as constitutionally defined.

The expression 'quasi-judicial' is not always used with clarity and accurately. Custodian (of evacuee property), though not a Court in the Ordinary Sence, is an authority which exercises judicial functions or functions analogous to the judicial and thus he is described as a 'quasi-judicial' authority.

The expression 'quasi judicial' has been termed to be one which stands midway a judicial and administrative function. If the authority has any express statutory duty to act judicially in arriving at the decision in question, it would be deemed to be quasi-judicial.

From the above provision, it is clear that besides Advocate an authorised representative can also appear before 'quasi-judicial' authority.

Sec.7B: Review of orders passed u/s.7-A

- (1) Any person aggrieved by an order made, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order:

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

- (2) Every application for review shall be filed in such form and manner and within such time as may be specified in the Scheme.
- (3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.
- (4) Where the officer is of opinion that the application for review should be granted, he shall grant the same, Provided that no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.
- (5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the orders passed under review were the original order passed by him u/s.7-A.

Sec.7-I: Appeals to Tribunal

Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (1) of section 7-A, or Section 7-B or section 7-C, or section 14-B, may prefer an appeal to a Tribunal against such notification or order. All the said appeals shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

5. Section 14 of the Act provides as under;

Whoever for the purpose of avoiding any payment to be made by himself under this Act, the Scheme, the family pension scheme or the Insurance scheme or of enabling any other persons to avoid such payment, knowingly makes or causes

to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(1) This section provides penalty for making a false representation or submitting a false statement by an employer or caused to be made by an employer. In case an employer submits incorrect information or incorrect statement he could be prosecuted under the Section of the Act. In order to constitute an offence under sub-section (1), the statement or representation must have been made knowingly and with the object of avoiding any payment to be made by the employer.

1A An employer who contravenes, or makes default in payment of inspection charges and administration charges shall be punishable with imprisonment for a term which may extend to 3 years but-

- (a) Which shall not be less than one year and a fine of ten thousand rupees in case of default in payment of the employees' contributions, which have been deducted by the employer from the employee's wages.
- (b) which shall not be less than six months and a fine of five thousand rupees in any other case.

Provided that the Court may, for any adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a lesser term.

1B. An employer who contravenes, or makes default in payment of EDLI contributions or Inspection charges shall be punishable with imprisonment for a

term which may extend to 1 year but which shall not be less than six months and a fine of five thousand rupees.

Provided that the Court may, for any adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a lesser term.

2. Subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance Scheme may provide that any person who contravenes, or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees or with both.
- 2A whoever contravenes, or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted u/s.17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to 6 months but which shall not be less than 1 month, and shall also be liable to fine which may extend to five thousand rupees.

Section 14A: Offences by Companies

- 1) If the person committing an offence under this Act is a company, every person, who at the time the offences was committed was in charge of, and was responsible to the Company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- 2) Notwithstanding anything contained in sub-section (1), where an offence under the Act has been committed by a company and it is proved that the offence has

been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 14B read with Para 32-A & Para 32-B of the Act states as under:

Where an employer makes default in the payment of any contribution to the Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 [the accumulations in any provident fund standing to the credit of the employees be transferred to the fund established under the Scheme and shall be credited to the accounts of the employees entitled thereto in the Fund] or sub-section (5) of section 17 [where any exemption granted is cancelled, the amount of accumulations to the credit of every employee to whom such exemption applied, in the provident fund of the establishment in which he is employed, shall be transferred within such time and in such manner as may be specified in the scheme to the credit of his account in the Fund] or in the payment of any charges payable under any other provision of the Act or scheme or under any of the conditions specified under section 17 of the Act, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears as may be specified in the Scheme. The damages shall be calculated at the rates given below;

Period of defaults	Rates of damages (% of arrears per annum)
(a) upto 2 months	5
(b) Above 2 months & upto 4 months	10
(c) Above 4 months & upto 6 months	15

Para 32-B: Terms and conditions for reduction or waiver of damages

The Central Board may reduce or waive the damages levied under section 14-B of the Act in relation to an establishment specified in the second proviso to section 14-B subject to the following terms and conditions, namely: -

- (a) The Central Board may reduce or waive the damages levied under section 14-B of the Act in relation to an establishment specified in the second proviso to section 14-B subject to the following terms and conditions namely:-
- (b) In case where the board for Industrial and financial Reconstruction, for reasons to be recorded in its scheme, in this behalf recommends, waiver of damages upto 100 per cent may be allowed;
- (c) In other cases, depending on merits, reduction of damages upto 50 per cent may be allowed.

Sec.7-Q: Interest payable by the Employer:

The employer shall be liable to pay simple interest at the rate of twelve percent 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.

Sec.8: Mode of recovery of moneys due from employers:

Any amount due

- (a) from the employer in relation to an establishment to which any scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or as the case may be, the Insurance Fund damages recoverable under section 14-B, accumulations required to be transferred under sub-section (2) of section 15 or under sub-section (5) of section 17 or any

charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme or

- (b) from the employer in relation to an exempted establishment in respect of any damages recoverable under section 14-B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17 or in respect of the contribution payable by him towards the Pension Scheme under the said section 17.

may, if the amount is in arrear be recovered by the Central Provident Fund Commissioner or such other officer as may be authorised by him, by notification in the Official Gazette, in this behalf in the same manner as an arrear of land revenue.