The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952

Introduction

Definitions (Section 2)

Question 1

State whether the following statement is true or false and give reason therefor with reference to the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

“Basic wages include the cash value of food concessions”

Answer

This statement is false because in terms of section 2 (b) clause (i) basic wages do not include the cash value of food concessions.

Section 2(b) of the EPF & Misc Provisions Act, 1952 defines basic wages as all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include among other things the cash value of food concessions.

While the non-inclusion of cash value of food concessions in basic wages is included in the definition of basic wages, it may however, be pointed out that any subsidy or concession is a benefit of reducing the cost of a commodity to the employee and hence cannot be construed as having been paid in cash to him. Therefore, it is not part of basic wage even as per the specific definition (without even considering exceptions).

Question 2

Define the term ‘Employer’ under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

Answer

Section 2(e) read with Section 2(k) of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 defines employer as –

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a
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... deceased owner or occupier and where a person has been named as a manager of the factory, the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a Manager, Managing Director, Managing Agent, such Manager, MD or Managing Agent shall be treated as employer.

It is interesting to note that employer does not mean the owner but the person in charge. Generally the term is often used in relation to an owner but it is not so.

Question 3

Vimal is an employee in a Company. The following payments were made to him during the previous year:

(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 Funds and Miscellaneous Provisions Act, 1952.

OR

Explain clearly the meaning of the term ‘Basic wages’ as defined under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. State also what is not included in the term ‘Basic Wages’.

Answer

Basic Wages: As per Section 2(b) of the Employees’ Provident Funds and Miscellaneous Provision Act, 1952, “Basic Wages” mean all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

(i) the cash value of any food concessions;

(ii) any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of a 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

(iii) any presents made by the employer.
The key characteristics of basic wages are:

(a) All emoluments (of whatever nature) earned during duty or during paid leave or during paid holidays;

(b) The above emoluments are in accordance with the terms of employment of the employee;

(c) The above emoluments are paid or payable in cash.

Therefore, emoluments or benefits of a non cash nature or any payment not in accordance with the terms of employment shall not form part of basic wage. Thus if an employer pays any amount as a reward to the employee out of his own will without being under the obligation to do so under the terms of employment of the employee, such payment shall not be basic wage under this Act.

Applying the above provisions of this Act to the given problem, the Basic wages of Vimal will include only piece rate wages but will exclude the Productivity bonus, additional dearness allowance and value of puja gift.

Question 4

What is the meaning of ‘factory’ under the EPF & MP Act, 1952? Examine, with reference to case laws.

Answer

Under section 2(g) of the EPF & Misc Provisions Act, 1952 “factory” means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power. Hence, for any premises to be designated as a “factory” the carrying on of manufacturing process in any part thereof is of the essence. It is not necessary that such activity is carried on with or without the aid of power.

As per Section 2 sub section (i) clause (ic), ‘manufacture’ or ‘manufacturing process’ means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

Thus, this definition of the manufacturing process is very wide.

However, under section 1 (3) clause (a) the Employees’ Provident Funds & Miscellaneous Provisions Act, 1952 applies to only those factories:

a. which are engaged in any industry specified in schedule 1 of the Act; and

b. in which 20 or more persons are employed.

The repairing and servicing of cars is included in the definition of the manufacturing process and any establishment doing such work will fall within the meaning of “factory”. [Lawly Sen v. RPFC (1959) 1 LabLJ 272 & AIR 1959 Pat 271].
Similarly a printing press of a university is ‘factory’ within the meaning of Section 2(g), although it is run by a larger organisation carrying on other activities falling outside the PF Act. [Andhra University v. RPFC(1985) 4 SCC 509 & AIR 1986 SC 463.]

**Industries as per Schedule I:** The industries to which the Act applies are specified in Schedule I to the EPF & Miscellaneous Provisions Act. Under Section 4, the Central Government can add any industry to schedule I by notification in the official gazette. Under these powers, various industries have been added from time to time. The schedule at present covers almost all types of industry, including cement, cigarettes, iron and steel, textiles, chemicals, food products, aerated water, paper and paper products, electrical, mechanical and general engineering products, beedi, automobile repairing and servicing, medical and pharmaceutical preparations, brick making etc. Practically, all organized industries are covered under the Act.

**Employees’ Provident Fund Scheme (Section 5)**

**Question 5**

Write a note on the composition and functions of Central Board of Trustees under the EPF & MP Act, 1952.

**Answer**

**Central Board of Trustees:**

Under Section 5A (1) of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the Board of Trustees, constituted by the Central Government by notification, referred to as the Central Board consisting of the following persons as members:

(a) Chairman and Vice-Chairman appointed by the Central Government.

(b) Central Provident Fund Commissioner as ex-officio member.

(c) Not more than 5 persons appointed by the Central Government from its officials.

(d) Not more than 15 persons representing the State Government appointed by the Central Government.

(e) 10 persons representing employees in the establishments to which the Scheme applies, appointed by the Central Government.

(f) 10 persons representing employers of the establishments to which the Scheme applies, appointed by the Central Government.

The functions of the Board are as follows:

(i) Section 5A (3): administering the Fund vested in it in such manner as may be specified in the Scheme.

(ii) The Central Board shall perform such other functions as it may be required to perform by or under any provisions of the Scheme, the Pension Scheme and the Insurance scheme.
Question 6
An Executive Committee is to be constituted to assist the Central Board under the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. State the composition of such Executive Committee.

Answer
The Executive Committee shall, under section 5AA (2) consist of the following persons as members, namely:

(a) a Chairperson, appointed by the Central Government from amongst the members of the Central Board;
(b) two persons appointed by the Central Government out of the members of the Central Board who had been appointed from amongst its officials;
(c) three persons appointed by the Central Government from the members of the Central Board as are appointed to represent the state governments as specified by the Central Government in this behalf.
(d) three persons appointed by the Central Government representing the employers of the establishments to which the scheme applies and who had been appointed in the Central Board.
(e) three persons appointed by the Central Government representing the employees in the establishments to which the scheme applies and who had been appointed in the Central Board.
(f) the Central Provident Fund Commissioner of Employees’ Provident Fund Organization

[Note: The Reconstitution of Executive Committee is as per the Notifications 1045(E) dated 13th May, 2011 by the Ministry of Labour and Employment]

Question 7
State whether the following statement is true or false and give reason therefor with reference to the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

“The chairman of the Executive Committee is appointed by the Central Board”.

Answer
This statement is false because under section 5AA (2) clause (a) the Chairman of the Executive Committee is appointed by the Central Government from among the members of the Central Board.

Question 8
State the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 regulating the quantum of contribution to be made by the employer and employee to the
provident fund. Is it possible for an employee to increase the amount of his contribution to the provident fund more than the minimum contribution as statutorily prescribed?

Answer

Contribution to Provident Fund under the EPF and Miscellaneous Provisions Act, 1952:
Section 6 of the EPF and MP Act, 1952 regulates contribution to Provident Fund Scheme established under the Act.

The employer's contribution shall be 10% of the basic wages, dearness allowance and retaining allowance, if any payable to each of the employees whether employed by him directly or by or through a contractor.

The employee's contribution shall be equal to the contribution payable by the employer in respect of him.

In case the employee so desires, he may contribute an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

Dearness allowance includes cash value of any food concession allowed to the employees.
Retaining allowance means the sum paid for retaining the service, when the factory is not working.

The Central Government may by notification make the employer's contribution equal to 12% for certain establishments class of establishments..

Question 9

While an employee may increase his contribution to Provident Fund, is an employer also liable to proportionately increase his contribution to the above under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952? Explain.

Answer

Under section 6 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 an employee may if he so desires, contribute an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

Hence the employer is not required to match the increased contribution of an employee.

Employees’ deposit-linked Insurance Scheme

Question 10

Write a note on Employees Deposit-Linked Insurance Scheme.
Section 6C(1) empowers Central Government to frame by notification in official gazette, a scheme to be called the Employees’ Deposit Linked Insurance Scheme, 1976 for the purpose of providing life insurance benefits to employees of any establishment or class of establishments to which PF Act is applicable.

Under the scheme a Deposit Linked Insurance Fund was set up. Under the scheme, an employer is required to pay into the Fund such amount, not exceeding 1% of the aggregate of the basic wages, dearness allowances and retainership allowance if any, as is notified by the Central Government. [Section 6C(2)].

The employer is also required to pay into the fund an additional sum of money not exceeding 25% of the contribution he is required to make into the fund under section 6C (2). This sum paid into the Fund is made to meet all expenses for the administration of the Employees’ Deposit Linked Insurance Scheme.

The Insurance Fund vests in the Central Board and will be administered by Central Board as specified in the Insurance Scheme [Section 6C(5)].

The Employees’ Deposit Linked Insurance Scheme may provide for all or any of the matters specified in Schedule IV.

The said Scheme may provide for any of its provisions to take effect prospectively or retrospectively on such date as specified in the scheme. [Section 6C(7)].

The employee is not required to contribute any amount to the Scheme.

The salary limit for coverage of employees is same as that of Employees Provident Fund Scheme.

Question 11

The Employees’ Deposit Linked Insurance Scheme, under Section 6C of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 has been amended by the Central Government. State these amendments.

Answer

Amendments have been made to the Employees’ Deposit Linked Insurance Scheme from time to time, in order to ensure increasing support to millions of workmen covered under the EPF, Pension and Insurance Schemes.

The latest amendment has been introduced vide Notification dated 22nd August 2014 issued by the Ministry of Labour and Employment, Government of India. This amendment has made a huge change which incorporates the following benefits:

(a) The statutory wage ceiling under the EPF, EPS and EDLI has been increased from INR 6,500 to INR 15,000 per month.
(b) For the financial year 2014-15, the minimum pension is fixed at INR 1,000/month for the members of the EPS or their nominee/widow, etc.

(c) Effective 1st September 2014, all new EPF members shall not become a member of EPS, if their pay is more than INR 15,000/month at the time of joining. In other words, no allocation towards pension fund will be made for such new members and the entire employee and employer contribution will go to the provident fund account;

(d) The insurance benefit under the EDLI scheme has been increased by 20% in addition to the existing admissible benefits.

Prior to this path breaking amendment the “The Central Government amended the Employees’ Deposit Linked Insurance Scheme, 1976 was amended by the introduction of the Employees’ Deposit Linked Insurance (Amendment) Scheme, 2010, according to which on the death of an employee, who is member of the Fund or of a provident fund exempted under section 17 of the Act, the person entitled to receive the provident fund accumulations of the deceased shall, in addition to such accumulations be paid an amount, equal to the average balance in the account of the deceased in the fund or a provident fund exempted under section 17 of the Act, as the case may be, during preceding twelve months or during the period of his membership, whichever is less, except where the average balance exceeds rupees fifty thousand, the amount payable shall be rupees fifty thousand plus 40% of the amount in excess of fifty thousand subject to a ceiling of Rupees one lakh.”

This above provision says that the EDLI amount is equal to the average balance of incumbent’s PF in the last 12 months or the overall balance, whichever is less. But if the balance exceeds ₹ 50,000, the incumbent’s nominee will get ₹ 50,000 plus 40% of the excess balance up to a total of ₹ 1 lakh.

Employees’ Deposit Linked Insurance (Amendment) Scheme, 2011 made further amendments to the EDLI Scheme.

As per the Notification No. G.S.R. 9(E), dated 8th January, 2011, the Central Government revised the benefits provided to the employees under the Employees’ Deposit Linked Insurance (Amendment) Scheme, 2010. Under the revised scheme, the benefit provided in case of death of an employee who was member of the Fund or of a Provident fund exempted under Section 17 of the Act at the time of the death, their family will get 20 times of the average wages of the last 12 months of the member.

By this amendment, benefits provided to the employees under the Employees’ Deposit Linked Insurance (Amendment) Scheme, 2010 has been enhanced. According to which maximum benefits under the scheme will now be ₹ 1,30,000/-, as the wage ceiling upto which contribution can be paid under the scheme is ₹ 6500.

This amendment has changed the methodology of computation by introducing a new and additional method for computation of benefit that has to be paid to the nominee of the deceased along with existing method of computation i.e., as per the EDLI (Amendment) Scheme, 2010, which ever is higher.
Employees’ Deposit Linked Insurance (Amendment) Scheme, 2014

According to the Notification No. G.S.R. 610(E), dated 22nd August, 2014, as per the above amendment scheme, wage limit upto which contribution can be paid under the scheme has been revised from rupees six thousand five hundred to rupees fifteen thousand. And the benefit provided under the scheme shall be further increased by twenty 20% in additions to the benefits provided under paragraph 22 of the scheme, as the case may be.

[Note: The students are advised to study thoroughly the latest amendment made in 2014 and read the earlier ones only for reference].

Question 12

An employee of a 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 month’s. Referring to the EPF & MP Act, 1952 what course of action an authority should have taken in this respect.

Answer

The Provident Fund “claims” complete in all respects submitted along with the requisite documents are required to be settled and the benefit amount paid to the beneficiaries within 30 days from the date of its receipt of the complete “claims” by the Commissioner.

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.

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.

Other provisions

Question 13

Describe the procedure for determination of moneys, due and escaped from employer under EPF & MP Act, 1952?

Or

Explain the provisions of Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 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.

Answer

Determination of moneys due from employers (Section 7A) : (1) Power to authorities to determine the due amount: Section 7A (1) of the Act gives power to the authorities mentioned therein i.e., Central PF Commissioner, Additional Central PF Commissioner,
Deputy PF Commissioner or any Regional PF Commissioner Assistant PF Commissioner to determine by order, the amount due from an employer under the provisions of the Act and the Pension or the Insurance Schemes and also decide the following additional matters:

(i) amount due as contribution.
(ii) the date from which the same is due.
(iii) the administrative charges.
(iv) amount to be transferred under Sections 15 or 17 of the Act.
(v) any other charges payable by the employer under the Act.

(2) Power to conduct enquiry- The authorities have been given power to conduct such enquiry as may be deemed necessary and for this they have been granted the same powers as are vested in a Court.

(3) Opportunity to an employer represent his case- Further under sub section (3), an order must not be made unless the employer concerned is given a reasonable opportunity of representing his case.

(4) Failure of employer/ employee to attend enquiry, produce documents etc.- Under sub section (3A) where the employer, employee or any other person required to attend the inquiry under Subsection (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.

(5) Set-aside of an order passes against an employer ex-parte- Further under sub section (4) of section 7A 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.

No such order shall be set aside merely on the ground that there has been an irregularity in the service of 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.

(6) Appeal to an order- It is also explained that 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 appellant has withdrawn the appeal, no application shall lie under this Sub-section for setting aside the ex parte order.

Under sub section (5) no order passed under this section shall be set aside on any application under Sub-section (4), under notice thereof has been served on the opposite party.
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(7) **Quasi-judicial nature of proceedings** - Thus, the scope of enquiry and manner of conducting the enquiry is at the discretion of the authority. As the proceedings shall be quasi-judicial and shall vitally affect the rights of the parties the principle of natural justice must be strictly followed in deciding the dispute in the proceeding. The employer is entitled to a reasonable opportunity of being heard. The order made under this section shall be final and will not be called in question in any Court of law.

**Determination of escaped amount (Section 7C)**: Where an order determining the amount due from an employer under Section 7A or Section 7B has been passed and if the officer who passed the order:

(a) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;

(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under Section 7A or Section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer.

He may, within a period of five years from the date of communication of the order passed under Section 7A or Section 7B, re-open the case and pass appropriate order re-determining the amount due from the employer in accordance with provisions of this Act.

However, no order re-determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case by other documents available on record.

**Question 14**

Examine the provisions in respect of review of orders passed under Section 7A of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

**Answer**

Review of orders – According to section 7B of the EPF & Miscellaneous Provisions Act, 1952, an order passed under section 7A can be reviewed as follows:

1. Any person aggrieved by an order made under sub-section (1) of section 7(A) 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.
2. 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.

3. Every application for the aforesaid review shall be filed in such form and manner and within such time as may be specified in the Scheme; and

4. 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.

5. Where the officer is of opinion that the application for review should be granted, he shall grant the same.

6. 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 order passed under review were the original order passed by him under section 7A.

Question 15

Examine the rules relating to review of order regarding determination of applicability of the EPF & MP Act, 1952 and the money due.

Answer

Under section 7B (1) of the EPF & Misc Provisions Act, 1952 any person who is aggrieved by the order under Section 7A(1) can make an application to the officer who has passed the order, for review of the same in following cases:

(a) If new and important evidence is discovered which could not be produced earlier as it was not within his knowledge even after due diligence; or

(b) There is some mistake or error apparent on the records; or

(c) Any other sufficient reason

It may be noted further that no application for review can be made if an appeal has been filed under the Act.

Under section 7B (2), every application under sub section (1) above, is required to be filed in such form and manner and within such time as may be prescribed in the Scheme.

The officer can either reject the application for review if there are not sufficient grounds for review, or he can grant the review. [Section 7B (3) and (4)].

Appeal cannot be filed against order rejecting the application for review. However, if fresh order is passed after the review, appeal can be filed against such order [Section 7B(5)].

In Balu Fire Clay Niwas v. U.O.I., 2003 LLR 578 (Jhar HC), it was held that when statute provides for review, it cannot be contended that petitioner should have filed appeal against the order. It was also held that review petition should be disposed of by a speaking order.
Question 16

Examine the constitution of appellate tribunal, its jurisdiction and the procedures relating thereto under the Employees’ Provident Funds and Miscellaneous Provision Act, 1952.

Answer

(1) Appeal to appellate tribunal- Under section 7I (1) of the EPF & Misc Provisions Act, 1952 any person aggrieved by:
   (a) a notification issued by the Central Government; or
   (b) an order passed by the Central Government; or
   (c) an order passed by any authority, under the various sections of the Act, as specified in this section;

may prefer an appeal to a Tribunal against such order. However, no appeal to the Tribunal can be made against an order passed by the officer, rejecting an application for review of his order under section 7B or section 14 B.

(2) Constitution of appellate tribunal- In terms of section 7D (1):

   (a) The EPF Appellate Tribunal shall be constituted by the Central Government by notification in the Official Gazette;
   (b) The Central Government shall constitute one or more such Tribunals;
   (c) The Appellate Tribunals will be constituted on the basis of jurisdiction within specified location which shall be included in the notification;
   (d) The Appellate Tribunal shall have the powers which are conferred on it by the EPF & Misc Provisions Act 1952;
   (e) Such Tribunal shall have one person only, the Presiding Officer, who will be appointed by the Central Government who shall be the judge on the matters dealt with by it;
   (f) No person shall be eligible to be appointed as the presiding officer of a Tribunal as above unless he is qualified to be appointed as a judge of a high court or a district judge.

The presiding officer holds office for five years or until he attains the age of 62 years, whichever is earlier [Section 7E].

Section 7F (1) provides that the Presiding Officer of the Employees’ Provident Funds Appellate Tribunal may by notice in writing under his hand addressed to the Central Government, resign his office. However, the Presiding Officer shall continue in his office:

   (a) unless he is permitted by the Central Government to relinquish his office sooner; or
   (b) until the expiry of three months from the date of receipt of such notice or
   (c) until a person duly appointed as his successor enters upon his office;
(d) or until the expiry of his term of office, whichever is the earliest.

(3) Jurisdiction and Procedure of the appellate tribunal- The Tribunal, during proceedings, will give opportunity of hearing to parties. It will then pass order (a) confirming, modifying or annulling the order appealed against, or (b) remand the matter back to the authority for fresh directions, with such directions as the Tribunal may deem fit [Section 7L(1)].

The Tribunal has powers to rectify its order, if it is apparent from the records. Such rectification can be made within five years from date of the order. If such rectification has effect of increasing the liability of the employer, notice has to be given to the employer and opportunity of hearing will be given before passing order [Section 7L(2)].

An order passed by the Tribunal is final and no appeal can be filed in any Court of law against the order [section 7L(4)].

Appeal can be entertained only after depositing 75% of amount demanded. However, the Tribunal can waive or reduce the deposit, for reasons to be recorded in writing [Section 7-O].

Question 17
State whether the following statement is true or false and give reason therefor with reference to the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

“Employee Provident Fund Appellate Tribunal shall consist of three judges”.

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

Question 18
Briefly explain the formation of Employees’ Provident funds Appellate Tribunal under the EPF & MP Act, 1952.

Answer
Under section 7D (1) of the EPF & Misc Provisions Act, 1952 the Central Government may, by notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the Employees’ Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by the EPF & MP Act,1952 and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal.

From the above provision the following points emerge:
(a) The EPF Appellate Tribunal shall be constituted by the Central Government by notification in the Official Gazette;
(b) The Central Government shall constitute one or more such Tribunals;
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(c) The Appellate Tribunals will be constituted on the basis of jurisdiction within specified location which shall be included in the notification;

(d) The Appellate Tribunal shall have the powers which are conferred on it by the EPT & Misc Provisions Act 1952;

(e) Such Tribunal shall have one person only as appointed by the Central Government who shall be the judge on the matters dealt with by it;

(f) No person shall be eligible to be appointed as the presiding officer of a Tribunal as above unless he is qualified to be appointed as a judge of a high court or a district judge.

Question 19

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 Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer

Section 7 F (1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides that the Presiding Officer of a Employees' 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 until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

Hence, R's action is invalid as per above provisions. He is supposed to continue for three months unless he is relieved earlier by the Central Government or his successor appointed by the Central Government has taken up the office, whichever is earlier.

Question 20

What are the orders that can be passed by Employees' Provident Funds Appellate Tribunal on appeals against the orders passed by the Central Government or authorized officers?

Answer

Under section 7L (1) the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the orders appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order as the case may be, after taking additional evidence, if necessary.
Under sub section (2) a Tribunal may at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record amend any order passed by it under sub-section (1) and shall make such amendment in the order if the mistake is brought to the notice by the parties to the appeal.

However, an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made unless the Tribunal has given notice to him of its intention to do so and has allowed him reasonable opportunity of being heard.

Further, under sub section (3) a Tribunal shall send a copy of every order passed under this section to the parties to the appeal.

Section 7L (4) further provides that any order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law. In short, the order of the Tribunal shall be final and binding on all parties concerned.

Question 21
State whether the following statement is true or false and give reason therefor with reference to the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

“An employer generally has to deposit 50% of the money due from him so as to go on appeal”

Answer
This statement is false as an employer under Section 7-O of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has to deposit 75% of the money due from him so as to go on appeal.

Question 21
S retired from the services of PQR Limited, on 31st March, 2009. He had a sum of ₹ 5 lac 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.

Answer
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:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

As per above provision, S can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here in
the absence of specified rate he(S) can claim only 12 percent per annum interest on the due amount.

Hence claim of S for interest rate of 15% is not tenable.

Question 22

**Explain briefly the mode of recovery that may be followed by the recovery officer under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 for recovering the amount due from an employer.**

**Answer**

Under section 8B (1) of the EPF & Misc Provisions Act, 1952 where any amount is an arrear under section 8, of EPF & MP Act, 1952 the authorised officer may issue to the Recovery Officer a certificate under his signature specifying the amount of arrears. The Recovery Officer, on receipt of such certificate shall proceed to recover the amount specified therein from the establishment or as the case may be, the employer by one or more of the modes mentioned below:

(a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, 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, as the case may be, the employer;

The attachment and sale of any property under section 8B shall first be effected against the properties of the establishment. Where such attachment and sale is insufficient for recovery the whole of the amount of arrears specified in the certificate, the Recovery Officer may then take proceedings against the property of the employer for recovery of the whole or any part of such arrears.

Under section 8B(2) it is further provided that the authorised officer may issue a certificate under section 8B(1) notwithstanding the fact that proceedings for recovery of the arrears by any other mode have been taken [.

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 [Section 8E].

Question 23

**State the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 relating to the protection of the amount standing to the credit of an employee in the provident fund against attachment.**

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 provisions of the Act.

**Answer**

As per Section 10 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or exempted employee, and neither the official assignee appointed under the Presidency Town Insolvency Act, 1909, nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on, any such amount. This protection also applies to provident fund, pension and insurance amount receivable by employee under the scheme.

The amount standing to the credit of the person at the time of his death is payable to his nominees under the scheme or the rules under this Act.

Further, the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court. (Section 10, EPF & MP Act, 1952).

**Question 24**

A company which is covered by the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 was adjudged insolvent and an order for winding up was made. State, in this connection, whether the Provident Fund is attachable and whether the payment of Provident Fund contribution be considered as priority over other Debts of the Company.

Or

Discuss under the Employees’ Provident Funds and Miscellaneous Act, 1952 as to whether the Provident fund contribution is a preferential payment in case of the employer being declared insolvent.

**Answer**

**Protection against attachment:** According to section 10 of the Employee’s Provident Fund and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member or of any exempted employee in the Provident Fund shall not in any way be capable of, being assigned or charged and shall not be liable to attachments under any decrees order of any court in respect of any debt or liability, incurred by the member or the exempted employee. Neither the official assignee appointed under the Presidency town Insolvency Act, 1909 nor any Receiver appointed under the Provincial Insolvency Act 1920 shall be entitled to have any claim on any such amount. Such amount shall also not be liable to attachment under any degree or order of any court.
Priority of Payment of Contribution over other debts (Section 11): If the employer is adjudged an insolvent or if the employer is a company and an order for winding thereof has been made, the amount due from the employer whether in respect of the employee’s contribution or the employer’s contribution must be included among the debts which are to be paid in priority to all other debts under Section 49 of the Presidency-Towns Insolvency Act, Section 61 of the Provincial Insolvency Act, Section 327 of the Companies Act, 2013 (i.e., section 530 of the Companies Act, 1956), in the distribution of the property of the insolvent or the assets of the company. In other words, this payment will be a preferential payment provided the liability therefor has accrued before this order of adjudication or winding up is made.

Question 25

An Inspector appointed under the Employees’ Provident Funds 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?

Answer

Under Section 13(2) of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, an Inspector can inspect and make copies of, or take extract from any book, register or other document 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 book, register or other document or portions thereof 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.

In the present case the Inspector had sought to take copies of the “Shareholders’ Register” which is irrelevant document for the purpose of EPF and MP Act, 1952. Moreover, he has visited the office after the working hours (10.00 pm) which is not reasonable.

Hence, the actions of the inspector are completely unreasonable under the EPF & Misc Provisions Act, 1952

Question 26

What are cognizable offences under the Act?

Answer

Cognizable offences mean the offences which are taken note of by the court for proceedings thereon. Under section 14 AC (1) no court shall take cognizance of any offence punishable under this Act, except:

(a) on a report in writing of the facts constituting such offence;

(b) The report must be made by an Inspector appointed under Section 13.
(c) The report is made with the previous sanction of 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;.

Section 14 AC (2) further provides that no court inferior to that of a Presidency Magistrate or a first class Magistrate, shall try any offence under this Act or the Scheme or the Pension Scheme or the Insurance Scheme.

Question 27

State whether the following statement is true or false and give reason therefor with reference to the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

“Default in payment of contribution by employer is a cognizable offence”.

Answer

This statement is true because according to Section 14AB of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, offences relating to default in payment of contribution by the employer is a cognizable offence.

A cognizable offence is defined in section 2 of the Criminal Penal Code as one where the police can arrest a person without warrant under the law in force.

Question 28

An employee leaves the establishments in which he was employed and gets employment in another establishment wherein he has been employed. Explain the procedure laid down in the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 in this relation.

Or

Describe in brief the mode of transfer of balance to the credit of Provident Fund Account of an employee leaving one organisation and joining another organisation, to the new employer under the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

Or

An employee working in an establishment covered by the E.P.F. and M.P. Act, leaves his employment and takes up employment in another establishment. State in this connection:

(i)  How shall the amount accumulated to his P.F. Account be transferred?

(ii) What steps shall be taken if the establishment in which he has joined is not covered by the Act?

(iii) What would be your answer if the establishment in which he was previously working is not covered by the Act?
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Answer

Transfer of accumulated amount to the credit of Employees’ Provident Funds on change of employment

Section 17 A (1) provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him shall be transferred, within such time as may be specified by the Central Government in this behalf, to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.

Similarly under sub section (2) where an employee employed in an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him may, if the employee so desires and the rules in relation to such provident fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the provident fund of the establishment in which he is re-employed.

Question 29

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? Examine the law, on this point, laid down in the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

Answer

Attachment of Provident Fund: According to Section 10 of E.P.F. & M.P. Act, 1952 the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or the exempted employee, and neither the official assignee appointed under the Presidency Towns Insolvency Act nor any receiver appointed under the Provincial Insolvency Act shall be entitled to or have any claim on, any such amount.

The amounts standing to the credit of aforesaid categories of persons at the time of their death and payable to their nominees under the scheme or the rules, and the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any court.

Question 30

Explain the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 authorising certain employers to maintain a Provident Fund Account.
Answer

Under section 16 A (1) of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorize the employer by an order in writing, to maintain a provident fund account in relation to the establishment subject to such terms and conditions, as may be specified in the scheme.

No authorization shall, however, be made under this sub-section, if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Act during the three years immediately preceding the date of such authorization.

Further, section 16A (2) provides that where an establishment is authorised to maintain a provident fund account as aforesaid, the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the scheme.

Section 16A (3) provides that any authorization made under this Section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorization or where he commits any offence under any provisions of this Act.

However, before cancellation of the authorization, the Central Government shall give the employer a reasonable opportunity of being heard.

Question 31

State the establishments, which were exempted from the operation of EPF & MP Act, 1952?

Answer

Under section 16(1) the EPF & MP Act, 1952 does not apply to:

(a) Any establishment registered under the Co-operative Societies Act, 1912, employing less than 50 persons and working without the aid of power; or

(b) To any other establishment belonging to or under the control of 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 or rule framed by the Central Government or the State Government governing such benefits; or

(c) To any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits; or
(d) Any other class of establishment, which the Central Government has by notification in the Official Gazette, that it is expedient to do so on the basis of the financial position, subject to such conditions and for such period as may be prescribed by the Central Government.

Question 32

Manorama Group of Industries sold its textile unit to Giant Group of Industries. Manorama Group contributed 25% of total contribution in Pension Scheme, which was due before sale under the provisions of Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. The transferee company (Giant Group of Industries) refused to pay the remaining 75% contribution in the Pension Scheme. Decide, in the light of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, who will be liable to pay for the remaining contribution in case of transfer of establishment and up to what extent?

Answer

The problem as asked in the question is based on the provisions of section 17(B) 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 license 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 up to the date of such transfer. It is further provided in the Proviso to the said section that the liability of the transferee shall be limited to the value of the assets obtained by him on such transfer.

It would be thus evident from the aforesaid provisions that 17-B deals with the liability of transferor and transferee in regard to the money due from the transferor establishment under (a) the Act or (b) the Scheme (c) and Pension Scheme. The liability of the transferor and transferee is joint and several, but the liability of the transferee is limited to the value of the assets obtained by the transferee from such transfer. Therefore applying the above provisions in the given case the transferor Manorama Group of Industries, the transferor has paid only 25% of the total liability as contribution in Pension Scheme before sale of the establishment. With regards to remaining 75% liability both the transferor and transferee companies are jointly and severally liable to contribute. In case, the transferor refuses to contribute, the transferee will be liable, to pay. However, the liability of the transferee company shall be limited to the value of assets obtained by it from the transfer.

Question 33

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.
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. 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.

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.

Question 34

Explain the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 regarding the following:

(i) rate of interest on amount due from the employer under the Act.
(ii) maximum limit of interest rate
(iii) the period for which the employer is liable to pay the said interest.

Answer

Rate, limit and period of payment of interest:

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

(i) 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.
 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.

(iii) 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.

Exercise

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?

[Hint: Both the parties are liable jointly and severally for the remaining contribution as per the
Section 17 B of the EPF&MP Act,1952]

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

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

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

[Hint: (i) Incorrect as per the provision given under Section 6 of the EPF&MP Act,1952]

(ii) Incorrect as per section 10 of the EPF&MP Act,1952]

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.

[Hint: Option (b) as per section1(3)(a) of the Employees’ Provident Funds and Miscellaneous
Act,1952]

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

(a) True.
(b) False.

[Hint: Option (a) as per section 1(3)(b) of the Employees’ Provident Funds and Miscellaneous
Act,1952]
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.
   
   [Hint: True, according to section 6 of the Employees’ Provident Funds and Miscellaneous Act, 1952]

   **Note:** This has now been revised to 12%

6. **The maximum contribution that an employee can make to his provident fund account is 10%.**
   (a) True.
   (b) False.
   
   [Hint: False, because according to section 6 of the Employees’ Provident Funds and Miscellaneous Act, 1952 the maximum contribution can be 12%]

   **Note:** There is no limit to the contribution that an employee can make to his PF. The only condition is that the Employer’s contribution is limited to 12%.