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Corporate Laws

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Balancing Rights - Karnataka HC Strikes Down Discriminatory EPF and EPS Scheme Amendments

Snapshot

The Karnataka High Court (HC) issued a significant ruling that declared amendments to the Employees' Provident Funds Scheme, 1952 (EPF), and Employees' Pension Scheme, 1995 (EPS), as invalid. These amendments, which included special provisions for international workers (IWs), were deemed unreasonable and unconstitutional by the court. Specifically, the court examined para 83 of EPF and para 43A of EPS, which created discrimination between domestic and foreign workers, finding them in violation of Article 14 of the Constitution. The court criticized the lack of a rational basis for such differentiation and noted the absence of reciprocity in extending these provisions to IWs from non-Social Security Agreement (SSA) countries. It concluded that the amendments deviated from the objectives of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (the Act), which aimed to provide social security to industrial workers in lower salary brackets. Ultimately, the court struck down the amendments as arbitrary and unconstitutional, thereby ensuring equality before the law for all workers, whether they are non-citizens working in India or Indian citizens employed domestically.

Facts of the case

The Petitioners¹, comprising employers and employees, contested the provisions pertaining to IWs in the EPF and EPS, arguing that they were unconstitutional and violated Article 14 of the Constitution of India. They asserted that these provisions contradicted the fundamental objectives of the Act. The petitioners argued that, under para 83 of EPF, IWs were included in the Act and the scheme regardless of their salary, while employees other than IWs earning more than INR 15,000 were excluded, leading to discriminatory treatment. In contrast, the respondents argued that the amendments for IWs were introduced to safeguard the rights of Indian workers stationed abroad and to comply with bilateral agreements with foreign countries. They contended that the classification of IWs was based on intelligible differentia and had rational justifications. Therefore, they deemed the challenge to the constitutional validity of the Act under Article 14 as unsustainable. The Karnataka HC adjudicated on this matter.

Petitioner's Arguments

The Petitioners asserted that the amendments to the EPF Scheme, particularly the introduction of Para 83, were unconstitutional and arbitrary. The arguments furthered by the petitioners to fortify their argument that the provisions concerning IWs were discriminatory and opposed to the object and intendment of the Act have been summarized herein below:

¹ Stone Hill Education Foundation & others vs. Union of India [W.P. No.18486/2012 and others]

- By virtue of para 83 of EPF, IWs were covered under the Act and the scheme irrespective of salary drawn by them whereas the employees other than IWs who drew salary exceeding INR 15,000 per month were outside the purview of the scheme. The ceiling limit under the Act was provided for coverage of weaker sections and no ceiling limit in case of IWs was a heavy burden on the employers required to contribute based on IWs' entire global salary.
- The IWs do not work till retirement but work only for a limited period and thus, requiring them to pay PF contribution on their entire global salary would cause irreparable injury.
- The majority of Indian employees are excluded from the Act due to the INR 15,000 threshold, while foreign nationals in higher positions earning significant salaries are included in the scheme. There was no intelligible differentia between the Indian employee and an IW who was not covered under the SSA or Bilateral Comprehensive Economic Agreement. This discrepancy violated Article 14 of the Constitution, which guarantees equality before the law.
- The Petitioners also challenged the government's assertion of reciprocity, highlighting that many countries lack SSAs with India, undermining the reciprocity argument's validity.
- The respondents countered by arguing that changes to the Act have historically included special provisions for different categories of workers, citing examples of such amendments. They emphasized that amendments were made to extend EPF and EPS coverage to IWs in order to uphold bilateral social security agreements with foreign nations and to safeguard the rights of Indian workers posted overseas.
- They pointed out that Indian workers were obligated to make mandatory social security contributions according to the laws of the country where they were posted, often resulting in a loss for them due to the benefits being payable only after completing a minimum qualifying period of contribution or residence, which was typically longer than the duration of their deputation. Therefore, the amended provisions allowed IWs from SSA countries to withdraw their PF accumulations upon ceasing to be employees in establishments covered under the Act.
- The respondents argued that IWs constituted a distinct class separate from employees covered under the Act, justifying the different classification. They asserted that this classification was based on intelligible differentia and had a rational connection to the intended objective. Consequently, they deemed the challenge to the constitutional validity of the Act as unsustainable.
- Furthermore, they contended that Article 14 applied to Indian citizens specifically and not to foreigners in general.

Respondent's Arguments

The Respondents objected the contentions of the petitioners and argued that the amendment provisions had been enacted by exercise of power conferred by the Act and were neither unconstitutional nor discriminatory. The arguments of the respondents have been summarized hereunder:

Decision of Karnataka High Court

The Karnataka HC ruled in favor of the petitioners, declaring para 83 of EPF and 43A of EPS unconstitutional and arbitrary. The court referenced Article 14 of the Constitution, which ensures equality before the law. It noted that while Article 14

prohibits class legislation, it does allow for reasonable classification for legislative purposes. To meet the criteria for reasonable classification, two conditions must be met: (i) the classification must be based on an intelligible differentia, and (ii) the differentia must have a rational relation to the objective of the legislation. The court observed that the definition of IWs included the following:

- An Indian employee having worked or going to work in a foreign country with which India has entered into a bilateral agreement being eligible to avail the benefits under the social security programme of that country, by virtue of eligibility gained or going to gain under the said agreement.
- An employee other than an Indian employee, holding other than an Indian passport working for an establishment in India to which the Act applies.

The Karnataka HC highlighted several key features of EPF and EPS provisions applicable to IWs, including:

- A detached IW contributing to the social security of the home country and certified as such by the detachment certificate for a specified period in terms of the bilateral SSA signed between that country and India is an “excluded employee” under these provisions.
- An Indian employee posted abroad remains classified as a domestic Indian employee if they work for a covered establishment in India. He is not an IW. An Indian employee attains the status of IW only when he becomes eligible to avail benefits under the social security programme of another country by virtue of eligibility gained or going to gain under the said agreement on account of employment in a country with which India has signed SSA. He/she shall remain in that status till the time he/she avails the benefit under the EPF Scheme.

- An IW is required to be covered on his entire salary. Contribution is payable on total salary payable on account of the employment of the employee for the wages by an establishment covered in India even for responsibility outside India. There is no cap on the salary up to which the employer’s share of contribution has to be diverted to EPS and the same is payable on the total salary of the employee.
- The amount at the credit of IW when he leaves India would be payable to him, only upon his attaining the age of 58 years in case of a non-SSA country.
- Only those employees covered by SSA will be eligible for withdrawal benefit under the EPS who have not rendered the eligible service (i.e., ten years) even after including the totalization benefit, if any, as may be provided in the said agreement. In all other cases of IWs not covered under SSA, withdrawal benefit under EPS would not be available.

The HC noted that though section 7(1) of the Act conferred power on the Central Government to modify the Scheme from time to time, such a power had to be exercised to meet the objects of the Act. The HC further noted that the Act was enacted with a view to see that those in lower salary brackets get retirement benefits and not to benefit the rich IWs who earned huge amounts of money.

The HC discussed that the aim and object of introducing para 83 of the EPF Scheme was to protect the Indian employees going abroad to work from being subjected to the social security and the retirement clause of their post-country which were prejudicial to their interest and to motivate those countries for entering into such agreements with India and to make it happen, reciprocal treatment was to be provided to the nationals of those countries working in India. **The HC held that para 83**

of the EPF Scheme was in the nature of subordinate legislation and therefore, the subordinate legislation could not travel beyond the scope of the mother Act. Since the Act provided for a ceiling limit, para 83 ought not have an unlimited threshold for IWs while denying the same benefit to Indian workers.

The HC also noted that an Indian employee, who is a member of the Act and working in a SSA country, continued to contribute based on the sum of INR 15,000, while a foreign worker from an SSA country without a certificate of coverage was required to contribute based on their entire salary, despite both being classified as 'international workers' by definition. Consequently, the HC concluded that paragraph 83 was discriminatory in treating international workers of Indian origin and foreign origin differently, thus violating Article 14 of the Constitution of India.

The HC further held that the distinction in the amount of contribution between an Indian employee going to a non-SSA country (not considered as an IW) and an employee from a non-SSA country coming to India (considered as an IW) was clearly discriminatory and violative of Article 14. The requirement to contribute based on the global salary of an IW, irrespective of where the salary is earned, was deemed arbitrary and in violation of Article 14 of the Constitution of India.

The HC further observed that para 83 eventually applied only to IWs from non-SSA countries since the IWs of SSA countries were either excluded employees or allowed to withdraw accumulation upon cessation of employment in India. Accordingly, it held that the claim of reciprocity was unsustainable.

The HC noted that treating non-citizen employees and Indian citizens differently while working in India, despite being equals in this context, violated Article 14 of the Constitution, which guaranteed equality before the law. Therefore, the court ruled that such differential treatment was unconstitutional.

KCM Comments

This is a landmark ruling for establishments employing IWs and may have far reaching implications.

Many questions have emerged because of the said judgement like:

- What about the contributions already deposited by IWs and Indian establishments, would the same need to be refunded?
- Are establishments required to continue contributing to EPF and EPS according to relevant provisions applicable to IWs, or should contributions cease following the judgment?
- Can IWs from non-SSA countries withdraw their accumulated funds?
- Regarding the Certificate of Coverage (COC) obtained from EPFO by Indian workers deputed to SSA countries, which grants them social security exemptions, will the COC remain valid in the future?
- Will IWs be exempted from making any social security contributions in India?
- What will happen to the existing SSAs signed by India with foreign countries?
- Is the judgment binding on states other than Karnataka, or will PF authorities in other states still enforce current provisions?
- If the judgment is overruled by a larger bench or the Apex court, what will be the implications?

It is worth mentioning that in paragraph 24 of the said judgment, the Honorable HC observed that Indian employees classified as IWs are obligated to contribute only up to the ceiling limit of INR 15,000 whereas IWs of foreign origin must contribute PF based on their entire salary. Notably, the scheme's provisions do not explicitly differentiate between contributions to be made by Indian employees under the IW category compared to those of foreign origin. The HC appears to have interpreted that Indian employees who are IWs should have the same eligibility to contribute to PF in India as domestic employees.

The EPFO has acknowledged the said judgement *via* press release dated 7 May 2024 wherein they have mentioned that they are in the process of evaluating the course of action in response to the said

judgement. The said judgement is likely to be challenged before the Apex Court and it is anticipated that the ruling will undergo scrutiny. Such a challenge would provide an opportunity for further legal interpretation. Until a final decision is reached, employers should remain vigilant and adapt their policies accordingly.

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