

THE EMPLOYEES' PROVIDENT FUNDS (AMENDMENT) ACT, 1953

No. 37 OF 1953



[12th December, 1953]

An Act to amend the Employees' Provident Funds Act, 1952.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Employees' Provident Funds (Amendment) Act, 1953.

2. Amendment of section 1, Act XIX of 1952.—In section 1 of the Employees' Provident Funds Act, 1952 (hereinafter referred to as the principal Act), after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Government, whether on an application made to it in this behalf or otherwise, that the employer and the majority of employees in relation to any factory have agreed that the provisions of this Act should be made applicable to the factory, it may, by notification in the Official Gazette, apply the provisions of this Act to that factory.”

3. Amendment of section 2, Act XIX of 1952.—In section 2 of the principal Act,—

(i) after clause (f), the following clauses shall be inserted, namely:—

“(ff) ‘exempted employee’ means an employee to whom a Scheme would, but for the exemption granted under sub-section (1) of section 17, have applied;

(fff) ‘exempted factory’ means a factory in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme, whether such exemption has been granted to the factory as such or to any person or class of persons employed therein;”;

(ii) after clause (i), the following clause shall be inserted, namely:—

“(ia) ‘manufacture’ means making, altering, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;”.

(Price annas 3 or 4d.)

4. Amendment of section 5, Act XIX of 1952.—Section 5 of the principal Act shall be re-numbered as sub-section (1) thereof and—

(a) to sub-section (1) as so re-numbered, the words “and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme” shall be added;

(b) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) A Scheme framed under sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme”.

5. Amendment of section 6, Act XIX of 1952.—In section 6 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Where under the provisions of any Scheme, any board of trustees is constituted for administering the Fund, such board of trustees shall be a body corporate under the name specified in the Scheme, having perpetual succession and a common seal and shall by the said name sue and be sued”.

6. Substitution of new section for section 8 in Act XIX of 1952.—For section 8 of the principal Act, the following section shall be substituted, namely:—

“8. *Mode of recovery of moneys due from employers.*—Any amount due—

(a) from the employer in relation to a factory to which any Scheme applies in respect of any contribution payable to the Fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme; or

(b) from the employer in relation to an exempted factory in respect of any damages recoverable under section 14B 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,

may, if the amount is in arrear, be recovered by the appropriate Government in the same manner as an arrear of land revenue”.

7. Amendment of section 9, Act XIX of 1952.—To section 9 of the principal Act, the following proviso shall be added, namely:—

“Provided that nothing contained in the said Chapter shall operate to render ineffective any provision of the Scheme (under which the Fund is established) which is repugnant to any of the provisions of that Chapter or of the rules made thereunder.”

8. Amendment of section 10, Act XIX of 1952.—In section 10 of the principal Act,—

(a) in sub-section (1),—

(i) after the words “of any member in the Fund” the words “or of any exempted employee in a provident fund” shall be inserted;

(ii) after the words “incurred by the member”, the words “or the exempted employee” shall be inserted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Any amount standing to the credit of a member in the Fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the Scheme or the rules of the provident fund shall, subject to any deduction authorised by the said Scheme or rules, vest in the nominee and 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”.

9. Amendment of section 11, Act XIX of 1952.—In section 11 of the principal Act, for the words beginning with “The amount due in respect of any contribution” and ending with the words “be deemed to be included”, the following shall be substituted, namely:—

“Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due—

(a) from the employer in relation to a factory to which any Scheme applies in respect of any contribution payable to the Fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme; or

(b) from the employer in relation to an exempted factory in respect of any contribution to the provident fund (in so far as it relates to exempted employees), under the rules of the provident fund, damages recoverable under section 14B 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,

shall, where the liability therefor has accrued before the order of adjudication or winding up is made, be deemed to be included”.

10. Substitution of new section for section 12 in Act XIX of 1952.—For section 12 of the principal Act, the following section shall be substituted, namely:—

“12. *Employer not to reduce wages, etc.*—No employer in relation to a factory to which any Scheme applies shall, by reason only of his liability for the payment of any contribution to the Fund or any charges under this Act or the Scheme, reduce,

whether directly or indirectly, the wages of any employee to whom the Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund to which the employee is entitled under the terms of his employment, express or implied”.

11. Amendment of section 13, Act XIX of 1952.—In sub-section (2) of section 13 of the principal Act,—

(a) after the words “have been complied with” the following shall be inserted, namely:—

“in respect of a factory to which any Scheme applies or for the purpose of ascertaining whether the provisions of this Act or any Scheme are applicable to any factory to which the Scheme has not been applied or for the purpose of determining whether the conditions subject to which exemption was granted under section 17 are being complied with by the employer in relation to an exempted factory”;

(b) in clause (a), the words “in relation to the Scheme” shall be omitted.

12. Amendment of section 14, Act XIX of 1952.—In section 14 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 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 three months, or with fine which may extend to one thousand rupees, or with both.”

13. Insertion of new sections 14A and 14B in Act XIX of 1952.—After section 14 of the principal Act, the following sections shall be inserted, namely:—

“14A. *Offences by companies.*—(1) If the person committing an offence under this Act or the Scheme made thereunder is a company, every person, who at the time the offence 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:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act or the Scheme thereunder 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.

Explanation.—For the purposes of this section,—

(a) 'company' means any body corporate and includes a firm and other association of individuals; and

(b) 'director' in relation to a firm, means a partner in the firm.

14B. *Power to recover damages.*—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 or in the payment of any charges payable under any other provision of this Act or of any Scheme or under any of the conditions specified under section 17, the appropriate Government may recover from the employer such damages, not exceeding twenty-five per cent. of the amount of arrears, as it may think fit to impose."

14. Amendment of section 15, Act XIX of 1952.—In section 15 of the principal Act,—

(a) in sub-section (1), for the words, figures and letters "Every employee who is a subscriber to any provident fund established by the employer and in existence on the 15th day of November, 1951, shall, pending the framing of a Scheme in respect of", the words and figures "Subject to the provisions of section 17, every employee who is a subscriber to any provident fund of a factory to which this Act applies shall, pending the application of a Scheme to" shall be substituted;

(b) in sub-section (2), for the words, brackets and figure "On the framing of any such Scheme as is referred to in sub-section (1), the accumulations standing to the credit of the employees in the provident fund", the words "On the application of any Scheme to a factory, the accumulations in any provident fund of the factory standing to the credit of the employees who become members of the Fund established under the Scheme" shall be substituted.

15. Amendment of section 16, Act XIX of 1952.—Section 16 of the principal Act shall be re-numbered as sub-section (1) thereof and—

(a) to sub-section (1) as so re-numbered, the following *Explanation* shall be added, namely:—

"*Explanation.*—For the removal of doubts, it is hereby declared that the date of the establishment of a factory shall not be deemed to have been changed merely by reason of a change of the premises of the factory";

(b) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) If the Central Government is of opinion that having regard to the financial position of any class of factories or

other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt that class of factories from the operation of this Act for such period as may be specified in the notification."

16. Substitution of new section for section 17 in Act XIX of 1952.—For section 17 of the principal Act, the following section shall be substituted, namely:—

"17. *Power to exempt.*—(1) The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt from the operation of all or any of the provisions of any Scheme—

(a) any factory to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other factory of a similar character; or

(b) any factory if the employees of such factory are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other factory of a similar character.

Explanation.—The following conditions shall be deemed to be always included in the conditions which may be specified in a notification under clause (a), namely:—

(i) the amount of accumulations in the provident fund shall be invested in such manner as the Central Government may direct;

(ii) the amount of accumulations to the credit of an employee in the provident fund shall, where he leaves his employment and obtains re-employment in another factory to which this Act applies, be transferred, within such time as may be specified in this behalf by the Central Government, to the credit of his account in the provident fund of the factory in which he is re-employed or, as the case may be, in the Fund established under the Scheme applicable to the factory.

(2) Any Scheme may make provision for exemption of any person or class of persons employed in any factory to which the Scheme applies from the operation of all or any of the provisions of the Scheme, if such person or class of persons is entitled to benefits in the nature of provident fund, gratuity or old age pension and such benefits, separately or jointly, are on the whole

not less favourable than the benefits provided under this Act or the Scheme:

Provided that no such exemption shall be granted in respect of a class of persons unless the appropriate Government is of opinion that the majority of persons constituting such class desire to continue to be entitled to such benefits.

(3) Where any person or class of persons employed in a factory is exempted from the operation of all or any of the provisions of any Scheme under sub-section (2), the employer in relation to such a factory—

(a) shall, in relation to the provident fund, old age pension and gratuity to which such person or class of persons is entitled, maintain such accounts, submit such returns, make such investment, provide for such facilities for inspection and pay such inspection charges, as the Central Government may direct; and

(b) shall not, at any time after the exemption, without the leave of the Central Government, reduce the total quantum of benefits in the nature of old age pension, gratuity or provident fund to which such person or class of persons was entitled at the time of the exemption."

17. Substitution of new sections for section 19 in Act XIX of 1952.—For section 19 of the principal Act, the following sections shall be substituted, namely:—

"19. *Delegation of powers.*—The appropriate Government may direct that any power or authority or jurisdiction exercisable by it under this Act or any Scheme shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also—

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

19A. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to—

(i) whether a factory is engaged in any industry specified in Schedule I; or

(ii) whether fifty or more persons are employed in a factory; or

(iii) whether three years have elapsed from the establishment of a factory; or

(iv) whether the total quantum of benefits to which an employee is entitled has been reduced by the employer,

the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final."

18. Amendment of Schedule I, Act XIX of 1952.—In Schedule I to the principal Act,—

(i) the words 'or production' shall be omitted;

(ii) to the Schedule I, the following *Explanation* shall be added, namely:—

Explanation.—In this Schedule, without prejudice to the ordinary meaning of the expressions used therein,—

(a) the expression 'Electrical, mechanical or general engineering products' includes—

(1) machinery and equipment for the generation, transmission, distribution or measurement of electrical energy and motors including cables and wires,

(2) telephones, telegraph and wireless communication apparatus,

(3) electric lamps (not including glass bulbs),

(4) electric fans and electrical domestic appliances,

(5) storage and dry batteries,

(6) radio receivers and sound reproducing instruments,

(7) machinery used in industry (including textile machinery) other than electrical machinery and machine tools,

(8) boilers and prime movers, including internal combustion engines, marine engines and locomotives,

(9) machine tools, that is to say, metal and wood working machinery,

(10) grinding wheels,

(11) ships,

(12) automobiles and tractors,

(13) bolts, nuts and rivets,

(14) power driven pumps,

(15) bicycles,

(16) hurricane lanterns,

(17) sewing and knitting machines,

(18) mathematical and scientific instruments,

(19) products of metal rolling and re-rolling,

(20) wires, pipes, tubes and fittings,

(21) ferrous and non-ferrous castings,

(22) safes, vaults and furniture made of iron or steel or steel alloys,

(23) cutlery and surgical instruments,

(24) drums and containers,

(25) parts and accessories of products specified in items 1 to 24;

(b) the expression 'Iron and Steel' includes pig iron, ingots, blooms, billets and rolled or re-rolled products into basic forms and tool and alloy steel;

(c) the expression 'Paper' includes pulp, paper board and straw-board;

(d) the expression 'textiles' includes the products of carding, spinning, weaving, finishing and dyeing yarn and fabrics, printing, knitting and embroidering."

19. Repeal of Ordinance 1 of 1953.—(1) The Employees' Provident Funds (Amendment) Ordinance, 1953 (1 of 1953) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken.