

ESTABLISHMENT(S)/ EMPLOYER(S) IS NOT OBLIGED TO CONTRIBUTE PROVIDENT FUND IN EXCESS OF STATUTORY LIMIT i.e. Rs. 6500=00 AS PRESCRIBED UNDER THE EMPLOYEES' PROVIDENT FUND SCHEME,1952

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Recently, the Hon'ble Supreme Court has pronounced land-mark judgment in the matter of *Marathwada Gramin Bank Karamchari Sanghatana and another Versus Management of Marathwada Gramin Bank and Others, 2011 LLR 1130*, wherein the Apex Court categorically pronounced that the employer/establishment is under an obligation to pay provident fund to its employees in accordance with the provisions of statutory scheme 1952. The establishment(s)/employer(s) can not be compelled to deduct provident fund contribution in excess of its statutory limit i.e. Rs. 6500=00. In the matter of *Marathwada Gramin Bank (supra)*, the main question / controversy of section 12 of the Employees' Provident Fund and Misc. Provisions Act,1952 ( in short the 'Act,1952') was considered by the Apex court while delivering the aforesaid judgment that:

*"Whether employer /establishment can reduce the basic wages/salary for the purpose of deduction of provident*

*fund contribution if it is excess of statutory limit (right now Rs.6500=00) or not?"*

**AND**

*"on such withdrawal, it could be challenged either under section 12 of the Employees' Provident Fund & Misc. Provisions Act,1952 or under section 9A of the Industrial Dispute Act,1947".*

**ANALYSIS AND CLARITY**

Before narrating a legal analysis of land-mark judgment (supra) here under , it is worthwhile to reproduce the relevant section of the Act, 1952 as well as paragraph of the Scheme, 1952 which are as under:-

**[12. Employer not to reduce wages, etc.**

No employer in relation to [an establishment] to which any [Scheme or the Insurance Scheme] applies shall, by reason only of his liability for the payment of any contribution to [the Fund or the Insurance Fund] or any charges under this Act or the [Scheme or the Insurance Scheme], reduce, whether directly or indirectly, the wages of any employee to whom the [Scheme or the Insurance Scheme] applies or the total quantum of benefits in the nature of old age pension, gratuity [provident fund or life insurance] to which the employee is entitled under the terms of his employment, express or implied.]

**26. Classes of employees entitled and required to join the fund**

(1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the Fund, shall become a member of the Fund forthwith.

(2) After this paragraph comes into force in a factory or other establishment, every employee employed in or in connection with the work or that factory or establishment, other than an excluded employee, who has not become a member already

shall also be entitled and required to become a member of the Fund from the date of joining the factory or establishment.

- (3) An excluded employee employed in or in connection with the work of a factory or other establishment, to which this Scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the Fund from the date he ceased to be such employee.
- (4) On re-election of an employee or a class of employees exempted under paragraph 27 or paragraph 27-A to join the Fund or on the expiry or cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.
- (5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as a member of the fund shall, on joining a factory or other establishment to which this Scheme applies, become a member of the fund forthwith.
- (6) Notwithstanding anything contained in this paragraph [an officer not below the rank of an Assistant Provident Fund Commissioner] may, **on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than rupees [rupees six thousand and five hundred] of his pay per month** if he is already a member of the Fund and thereupon such employee shall be entitled to

the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.

### **Paragraph 29 of the Scheme, 1952 . Contributions**

- (1) The contributions payable by the employer under the Scheme shall be at the rate of [ten per cent] of the [basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any)] payable to each employee to whom the Scheme applies:

Provided that the above rate of contribution shall be [twelve] per cent in respect of any establishment or class of establishments which the Central Government may specify in the Official Gazette from time to time under the first proviso to sub-section (1) of section 6 of the Act.

- (2) The contribution payable by the employee under the Scheme, shall be equal to the contribution payable by the employer in respect of such employee:

Provided that in respect of any employee to whom the Scheme applies, the contribution payable by him may, if he so desires, be an amount exceeding [ten per cent] or [twelve per cent], as the case may be, 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 the Act;**

- (3) The contributions shall be calculated on the basis of [basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any)] actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis.
- (4) Each contribution shall be calculated to [the nearest rupee, 50 paise or more to be counted as the next higher rupee and fraction of a rupee less than 50 paise to be ignored.

In fact, section 12 of the Act, 1952 has given protection to the employee(s) that the employer is not permitted to reduce wages or other benefits enjoyed by employees under terms of employment and therefore, section 12 of the Act, 1952 lays down that an employer of the establishment covered by the Act, 1952 and three Schemes framed there under shall not reduce whether directly or indirectly –

- (i) wages of any employee to whom the scheme or the insurance scheme applies, or
- (ii) the total quantum of benefits in the nature of old age pension, provident fund or life insurance to which the employee is entitled in term of his employment , express or implied

Initially such dispute of section 12 of the Act, 1952 was decided by the Hon'ble High of Kerala on 2<sup>nd</sup> September'2003 in the matter of **N. Vijayan, Instructor, Milma Training Centre, Kerala Co-operative Milk Marketing Federation Ltd. Vs. Secretary to Government of India, Agriculture (Dairy) Department, 2004 III CLR 463.** Thereafter, such identical issue/dispute was also decided by the Hon'ble Kerala High Court in the matter of **North Malabar Gramin Bank Officers' Association & Another Vs. Reserve Bank of India and others , 2005 I CLR 610** that ..... *"The Management was competent to take a decision restricting their share of contribution to the EPF Scheme to the statutory limits. The concession they had given by making the contribution at the same rate of the contribution made by the workmen i.e. in excess of the statutory limits was in violation of the provisions of the Scheme and hence has to be modified in accordance with the provisions of the Scheme. Hence I do not find any grounds for interference with the Notification issued by the South and North Malabar Gramin Banks limiting their rate of contribution to the EPF Scheme at the statutory limits and all these Scheme at the statutory limits and all these original petitions are liable to be dismissed."*

Later on, the division bench of the Hon'ble Kerala High Court in the matter of **Vijayan Vs. Secretary to**

**Government, 2006 LLR 935** also decided such controversy of section 12 of the Act, 1952 and clearly pronounced in paragraph 10 that the employer is not obliged to make contribution in excess of statutory limits, prescribed under the Act, 1952 and the Scheme, 1952 framed there under.

Again , the above dispute of section 12 of the Act,1952 was also raised before the Apex Court in the matter *Marathwada Gramin Bank ( supra)*. The Apex Court decided the question of law regarding interpretation of the provision of Section 12 of the Act,1952 in paragraph 22 that ..... " 22. The appellants contended before this Court that this case involved in substantial question of law regarding interpretation of the provisions of Section 12 of 1952 Act. It was also argued by the appellants that the contribution to provident fund is a component of wages and when admittedly the respondent bank has paid its share of the provident fund contribution in excess of the amount prescribed in the 1952 Act for a long period of time and continued to contribute at such higher rate without any ceiling even after withdrawal of the exemption for a period of 7 years and had also framed rules whether it is open to the respondent bank to reduce its contribution towards provident fund."

23. The appellants submitted that in view of the facts of this case, Section 12 of the 1952 Act is clearly attracted. The appellants reiterated before this Court the submissions advanced before the Division Bench of the High Court.

24. We have heard the learned counsel for the parties at length and perused the relevant provisions of the Act. It may be pertinent to mention that the respondent bank complied with the provisions of the 1952 Act meticulously after it became applicable from 1.9.1979. The respondent bank complied with the provisions of the Scheme till 31.8.1981. Thereafter, the respondent bank formed its own trust and framed its own Scheme for payment of provident fund. In that Scheme, the respondent bank paid higher amount of provident fund to its employees than what the respondent bank was obliged to pay according to the statute or the agreement with the appellants.
25. The Regional Provident Fund Commissioner vide order dated 29.08.1981 exempted the respondent bank from complying with the statutory provisions of the Scheme with effect from 1.9.1981. Admittedly, the respondent bank paid provident fund to its employees as per its own Scheme for the period from 1.9.1981 to 31.8.1993.
26. The said exemption/relaxation granted on 29.8.1981 was withdrawn and cancelled on 14.10.1991 and the respondent bank was directed to implement the provisions of the statutory Scheme. Despite cancellation of the exemption, the respondent bank continued to pay excess provident fund to its employees in accordance with the earlier Scheme till 31.8.1993. Thereafter, the respondent bank issued a notice of change under section 9A of the Industrial Disputes Act, 1947 expressing its intention to discontinue payment of provident fund in excess of its statutory liability with effect from 1.11.1998. It may be pertinent to mention that owing to huge accumulated losses of the respondent bank, the bank though

continued to pay according to the provisions of the statutory Scheme, but discontinued payment of provident fund in excess of its statutory liability.

27. The respondent bank is under an obligation to pay provident fund to its employees in accordance with the provisions of statutory Scheme. The respondent bank cannot be compelled to pay the amount in excess of its statutory liability for all times to come just because the respondent bank formed its own trust and started paying provident fund in excess of its statutory liability for some time. **The appellants are certainly entitled to provident fund according to statutory liability of the respondent bank. The respondent bank never discontinued its contribution towards provident fund according to the provisions of the statutory Scheme.**

28. The view which has been taken by the learned Single Judge and affirmed by the Division Bench of the High Court is just, fair, appropriate and in consonance with the provisions of the 1952 Act. 29. In our considered view, no interference is called for. These appeals filed by the appellants being devoid of any merit are accordingly dismissed. In the facts and circumstances of these appeals, the parties are directed to bear their own costs.

So, keeping in view of the Apex Court's judgment in the case of *Marathwada Gramin Bank (supra)*, the establishment (s)/employer(s) may reduce the basic wages/salary of the Employees upto Rs.6500=00 for purpose of deduction of provident contribution as per section 6 of the Act,1952. If

such decision is taken by the establishment(s) /employer(s), then there is no violation of section 12 of the Act, 1952 and therefore, the Regional Provident Fund Commissioner or Assistant Provident Fund Commissioner, being quasi-judicial authority under the Act, 1952 , can not issue any notice under section 7A of the Act,1952 for determination of PF dues.

Now , as per Article 141 of the Constitution of India , the law declared by the Supreme Court to be binding on all courts within the territory of India. Decision/judgment (supra) of the Supreme Court, laying down position of law is binding on all. Laws made by the Supreme Court are not only matters of individual opinion but they are products of judicial functioning , having binding force and they must be taken by all courts as binding and absolute and must be followed diligently.

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