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EMPLOYEES PROVIDENT FUND OFFICERS' ASSOCIATION
(Recognised)

Bhavishya Nidhi Bhawan, G.S. Road, Near Bharalu Bridge,
Bhangagarh, Guwahati – 781 005. (Assam)

To,

Date August 03, 2012

The Chairman, the Central Board

Place: Guwahati

(By Name to Shri Mallikarjun Kharge)

Subject: Removal of the pay ceiling of Rs. 6,500 for application of the EPF Act, 1952 and discontinuation of contribution of 1.16% of the pay by the Central Government to the Employees' Pension Fund – reg.

Sir/Madam,

This communication is to draw your attention to some of the issues relating to the provisions of the Employees' Provident Funds Act, 1952 (the Act) and the Schemes framed thereunder, which require your urgent attention to keep the Act relevant and effective.

Two such issues are identified and enlisted below:

I. Removal of the pay ceiling of Rs. 6,500 per month of an employee for him/her to be covered under the sweep of the Act.

II. Discontinuation of the contribution of 1.16% of the employees' pay by the Central Government payable to the Employees' Pension Fund.

The changes proposed and the reasons and urgency for these changes are explained in detail and the same is enclosed as [**Annexure I**].

In this regard, the Parliamentary Standing Committee on Labour in its 8th Report on the impugned subject strongly advocates the amendments proposed under the instant communication. Excerpts from the Report are reproduced hereunder: *"The Committee are saddened to note that the Ministry of Labour has been mulling over the wage ceiling revision proposal under the EPF Scheme for too long unwarrantedly. Such an attitude of apathy and indifference negates the very mandate to safeguard the interest of workers in general and of those who constitute the poor, the deprived and the disabled sections of society. Apparently, the Ministry is either oblivious or pays scant regard to the Constitutional mandate directing the State to strive to secure just socio-economic order, among others, and to try to secure a living wage and decent standard of living."* Extracts from the said Report is enclosed as [**Annexure II**].

It is requested to deliberate the issues raised in this communication, in the ensuing meeting of the Executive Committee of the Central Board and the Central Board scheduled on August 06 and 07 respectively.

It is noteworthy that the concept of "excluded employee" is not provisioned anywhere in the Act. By importing this definition through the P F Scheme, the whole Act is emasculated of its force and purpose and what was sought to be achieved through a Parliamentary legislation is negated through the executive measure of introduction of the definition of "excluded employee" in the P F Scheme.

In any case it is exhorted, Sir, that whatever pay limit is considered appropriate the same should be applicable to all employees to that extent irrespective of fact that he may be in receipt of pay in excess of the stipulated pay/wage limit. This vital objective can be achieved by a simple executive action of abrogation of sub-clause (ii) of clause (f) of Para 2 of the Employees' Provident Funds Scheme, 1952.

It is hoped that your timely intervention shall reposition the Act as the principal instrument in achievement of the Preambular Constitutional mandate of "JUSTICE, social, economic and ...". Prompt action on your part can ensure that the Act may continue to serve as bulwark against the Constitutional aspiration that the State should not allow the "cases of undeserved want" for its citizens.

Thanking you.

Yours faithfully

Sudarshan Kumar
Secretary General
EPF Officers' Association

Annexure I

Changes Required in the P F Scheme, 1952.

I. Removal of pay ceiling of Rs. 6,500 per month.

The Act and the schemes under it envisage that an employee whose pay at the time he is otherwise entitled to become a member of the Employees Provident Funds Scheme, 1952, (P F Scheme) exceeds Rs. 6,500 per month shall be an excluded employee and therefore the Act or the P F Scheme or the Pension Scheme shall not apply to them.

In this connection provisions of the Act and the Schemes may be considered hereinbelow: Section 6 of the Act provides that the employer shall be required to pay a fixed percentage (10/12%) of the pay of the employees under him to the Provident Fund. The employee shall make a matching contribution to the Provident Fund.

Para 3 of the Employees' Pension Scheme, 1995 (Pension Scheme) provides that *"from and out of the contributions payable by the employer in each month under Section 6 of the Act or..., a part of the contribution representing 8.33% of the employees' pay shall be remitted by the employer to the Employees' Pension Fund...".*

Thus membership to the Employees' Pension Fund (Pension Fund) is contingent upon the membership to the Provident Fund.

Para 26 of the P F Scheme under the marginal note "Classes of employees entitled and required to join the (Provident) fund" provides that *"Every employee...except an excluded employee, shall be entitled and required to become a member of the (Provident) fund..."*
Thus an employee who is an "excluded employee" is NOT covered either under the P F Scheme or the Pension Scheme.

But the critical definition (relevant portion) as to who is an excluded employee is contained under sub-clause (ii) of clause (f) of Para 2 of the P F Scheme which sets out that *"excluded employee means an employee whose pay, at the time he is otherwise entitled to become a member of the (Provident) Fund, exceeds six thousand and five hundred rupees per month"*
It is this definition of the excluded employee that takes an employee drawing a pay of Rs. 6,500 per month beyond the scope of both Provident Fund and Pension Fund. As a matter of fact most of the Indian states including Delhi have raised the minimum wage to a level that works out to be higher than Rs. 6,500 per month. A combined reading of the definition of the excluded employee and the minimum wage prescribed by most of the stated lead to the inevitable conclusion that the Act has been quietly relegated to a voluntary piece of legislation having no binding force over an overwhelming majority of

establishments or employers. Thus, the EPF Act, 1952 which was created by Indian Parliament as the most vital pillar to shoulder the Constitutional responsibility that *"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life." [Article 38 (1) of the Constitution of India]. The Act has ceased to discharge its Constitutional mandate due to governmental inaction to abrogate or revise the definition of the "excluded employee" contained under* sub-clause (ii) of clause (f) of Para 2 of the Employees' Provident Funds Scheme, 1952.

To restore the vitality and discharge of the Constitutional functions assigned to the Central Board under the EPF Act, 1952 it is exhorted to amend by way of deletion of the sub-clause (ii) of clause (f) of Para 2 of the Employees' Provident Funds Scheme, 1952 that defines an "excluded employee" in terms of pay exceeding Rs. 6,500 per month.

It is explained further that the pay ceiling was revised last in June 2001 when it was raised from Rs. 5,000 per month to Rs. 6,500 per month. Since the year 2001 the real wage (adjusted to inflation) has doubled and the inflation too, as measured by consumer price index (CPI) for Industrial Worker, has doubled(taking 2001 as base year, CPI for Industrial Worker has reached 206 in May 2012. Source: Labour Bureau, Ministry of Labour, GoI) [**Annexure III**]. Thus compared to the wage limit of Rs. 6500/- prevailing in June 2001 the comparable amount at present is Rs. 26,000 (Rs. 6,500x2x2).

In the light of this analysis it is suggested that if the doing away of the wage ceiling is not possible for any reason, the "six thousand five hundred rupees" appearing in all provisions mentioned above in the tabular form should be substituted by "twenty six thousand rupees" or any other sum considered fit for effective discharge of Constitutional mandate under the Act.

II. <u>Discontinuation of the contribution of 1.16% of pay by the Central Government to the Employees' Pension Fund.</u>

Paragraph 3 of the Employees' Pension Scheme, 1995 provides for contribution to the Pension Fund. Sub-para (2) provides that *"The Central Government shall also contribute at the rate of 1.16 per cent of the pay of the members of the Employees' Pension Scheme and credit the contribution to the Employees Pension Fund…"*

Under this provision the Central Government pays a sum in the range of a thousand crore Rupees per annum towards Pension Fund. Though this sum is not substantive, given the volume of Central Government outgo, this has proved a major obstacle in the way of doing away the pay ceiling of Rs. 6500/- per month or to raise this ceiling to match the increase in the real wage adjusted to the obtaining level of inflation. This inference is evidenced from the fact that the wage ceiling provided under the ESIC Act, 1948 is revised six times within a span of 14 years and raised to Rs. 15,000/- per month since May 2010. Now the same is being considered for being raised to Rs. 25,000/- per month. It is so because there exist no provision in the ESIC Act that requires any contribution from the Central Government. Thus on the one hand, while enacting the legislation the Central Government assumes those responsibilities upon itself that displays its keenness in achievement of Constitutional objectives and on the other, when it comes to discharging those responsibilities, it acts unmoving and a laggard. In the name of this contribution by the Central Government that all affairs related to the Central Board/ EPFO are sent to the Department of Expenditure, which in turn vetoes and had vetoed in the past many decisions of the Central Board and its Executive Committee meant to meet the legitimate needs of Organisational expansion and growth of the Cadre. It is expected that if the Central Government is relieved of the obligation to contribute the said share of 1.16% of the pay to the Pension Fund it will act promptly to update the provisions of the Act and the Schemes to keep pace with the needs of the time.

It is pertinent to note that the recent study undertaken regarding the viability of the Pension Fund applying PROST Model shows no deficit in the Pension Fund and therefore doing away the pay ceiling or raising it to a higher pay level shall have no bearing upon the viability of the Pension Fund.

Further, these changes are required not in the Act but in the Schemes framed under the Act and therefore theses changes require only administrative action and no prior Parliamentary approval is required. Despite the relative ease to amend the provisions of the Scheme to keep the Act relevant, the same was not undertaken by the Central Government to avoid increase in liability on account of 1.16% contribution by the Central Government towards the Pension Fund.

<u>Suggested Changes:</u>

Certain provisions of the Schemes require urgent amendment. For easy comprehension, details of the amendments required in the Schemes to incorporate the suggested changes, for the reasons recorded above, are summarised below in a tabular form:

Sl. No.	Section/ Para	Act/Scheme	Provision	Recommendation	Note
1.	sub-clause (ii) of clause (f) of	Employees' Provident Funds Scheme,	*"excluded employee means an employee whose pay, at the time he is otherwise entitled to become a member*	To be DELETED.	The principal obstacle in allowing

	Para 2	1952	*of the (Provident) Fund, exceeds six thousand and five hundred rupees per month"*		the Act to discharge its constitutional duty
2.	Sub-para (6) of Para 26	Employees' Provident Funds Scheme, 1952	*"Notwithstanding anything contained in this paragraph an officer not below the rank of Assistant Provident Fund Commissioner ... allow him to contribute on more than rupees six thousand and five hundred of his pay per month if..."*	To be DELETED.	As this provision is analogous to and contingent upon the principal provision 1.) above.
3.	Proviso to sub-para (2) of Para 26 A	Employees' Provident Funds Scheme, 1952	*"Provided that subject to the provisions contained in sub-paragraph (6) of paragraph 26 and ... where monthly pay of such a member exceeds six thousand and five hundred rupees..."*	To be DELETED.	As this provision is analogous to and contingent upon the principal provision 1.) above.
4.	sub-paragraph (2) of Para 3	Employees' Pension Scheme, 1952	*"The Central Government shall also contribute at the rate of 1.16 per cent of the pay of the members of the Employees' Pension Scheme and credit the contribution to the Employees Pension Fund:..."*	To be DELETED.	This provision serves as principal obstacle to updating the provisions of the Scheme.

It is requested to deliberate the issues raised in this communication, in the ensuing meeting of the Executive Committee of the Central Board and the Central Board scheduled on August 06 and 07 respectively.

It is hoped that your timely intervention shall reposition the Act as the principal instrument in achievement of the Constitutional mandate of social equity and security.

Annexure II

8

STANDING COMMITTEE ON LABOUR

(2009-2010)

FIFTEENTH LOK SABHA

MINISTRY OF LABOUR AND EMPLOYMENT

[Action taken by the Government on the Recommendations/Observations contained in the Thirty-Ninth Report of the Standing Committee on Labour on the `Employees' Provident Fund Organisation – Employees' Pension Scheme, 1995']

EIGHTH REPORT

LOK SABHA SECRETARIAT

NEW DELHI

March, 2010/ Phalguna, *1931 (Saka)*

CHAPTER I

REPORT

This Report of the Standing Committee on Labour deals with the action taken by the Government on the recommendations/observations contained in the Thirty-Ninth Report (14th Lok Sabha) on `Employees' Provident Fund Organisation-Employees' Pension Scheme, 1995' relating to the Ministry of Labour and Employment which was presented to Lok Sabha, and laid in Rajya Sabha, on 20.02.2009.

2. The Ministry of Labour and Employment were requested to furnish action taken replies to the recommendations contained in the Thirty-Ninth Report within three months from the presentation of the Report *i.e.* by 20.05.2009. The report contained 8 recommendations/observations. The action taken replies of the Government in respect of all the recommendations contained in the report were received on 09.11.2009. These have been categorized as under:-

4. The Committee will now deal with the action taken by the Government on some of their recommendations which merit comments in the succeeding paragraphs.

A. <u>Increase in Wage Ceiling</u>

<u>(Rec. Sr. No.1, Para 75)</u>

5. The Committee noted that the wage ceiling of Rs.6,500/- for the purpose of coverage under EPF Scheme was last revised w.e.f. 1st June 2001. Keeping in view the rapid transformation that had taken place in our economy, leading to substantial increase in the wages of the employees, the wage limit in vogue had lost its relevance. While accepting the changing trend in our employment scenario, ESIC, the another organisation of the Ministry, accordingly revised the wage ceiling to Rs.10,000/- for the purpose of coverage. The Committee were of the consistent view that the Scheme called for self valuation based on sound and real principles of economic management for revamping and reorienting the Scheme ensuring maximum coverage of workers as well as enhanced rate of pension to them. The Committee, therefore, strongly recommended that the Government should come out of its slumber and retrograde approach by adapting itself to the opportunities

being thrown by the new employment scenario of high wages and revise the wage ceiling for coverage under EPFO to Rs. 15,000/- without any delay.

6. In their action taken reply furnished to the Committee, the Ministry have stated:-

> `In order to implement the recommendation of the Committee regarding increase in wage ceiling for coverage under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 from Rs.6,500/- to Rs.15,000/-, various options to neutralize the associated liability on Pension Fund due to this revision are being explored in consultation with the experts and thereafter, the proposal shall be moved for carrying out the requisite amendments in the Act/Scheme'.

7. **The Committee are saddened to note that the Ministry of Labour has been mulling over the wage ceiling revision proposal under the EPF Scheme for too long unwarrantedly. Such an attitude of apathy and indifference negates the very mandate to**

safeguard the interest of workers in general and of those who constitute the poor, the deprived and the disabled sections of society. Apparently, the Ministry is either oblivious or pays scant regard to the Constitutional mandate directing the State to strive to secure just socio-economic order, among others, and to try to secure a living wage and decent standard of living. Considering the whopping contributions which have accumulated with the EPFO over the years and which continue to mount, the Committee have sound reasons to believe that given proper will, commitment and concern expected of a welfare State, the EPF wage ceiling can be enhanced suitably, as recommended by the Committee, and also revised periodically to safeguard the interest of the intended beneficiaries.

B. <u>Need to revise rate of contributions</u>

<u>(Rec. Sr. No.2, Para 76)</u>

8. The Committee noted that EPS, 1995 is a contributory scheme wherein the employers' contribution towards the pension of the employee is diverted @ 8.33% from the total contribution of 12% made

Annexure III
Annexure III

Source : Labour Bureau, Ministry of Labour, GoI

CPI for Industrial Worker

Base Year : CPI-2001

Item Code	Items	2012:05 (MAY)	2012:04 (APR)	2012:03 (MAR)	2012:02 (FEB)	2012:01 (JAN)	2011:12 (DEC)	2011:11 (NOV)	2011:10 (OCT)	2011:09 (SEP)	2011:08 (AUG)	2011:07 (JUL)	2011:06 (JUN)	2011:05 (MAY)	2011:04 (APR)	2011:03 (MAR)
A)	GENERAL INDEX	206.00	205.03	201.46	198.88	198.15	196.64	198.56	198.41	196.57	194.37	192.96	188.89	187.11	186.05	184.90
A.1)	FOOD GROUP		217.82	211.66	207.26	206.46	206.66	211.68	211.63	208.78	205.47	203.61	200.59	198.25	197.47	196.27
A.2)	PAN. SUPARI, TOBACCO & INTOXICANTS		209.89	205.40	201.17	199.65	197.79	196.29	194.88	192.67	191.51	189.73	187.93	185.28	183.77	179.32
A.3)	FUEL & LIGHT		205.83	201.20	198.47	196.32	193.93	192.46	191.50	189.81	188.19	186.01	177.35	173.88	171.20	168.53
A.4)	HOUSING		230.88	230.88	230.88	230.88	223.13	223.13	223.13	223.13	223.13	223.49	212.30	212.30	212.30	212.30
A.5)	CLOTHING, BEDDING & FOOTWEAR		163.50	162.21	161.06	159.80	159.01	157.83	156.63	155.16	152.70	151.71	150.22	148.90	145.88	143.92
A.6)	MISCELLANEOUS GROUP		173.75	172.72	171.86	171.41	170.65	169.84	170.03	168.86	167.26	165.72	164.54	163.15	161.83	161.02

Base Year : CPI-1982

Item Code	Items	2006:01 (JAN)	2005:12 (DEC)	2005:11 (NOV)	2005:10 (OCT)	2005:09 (SEP)	2005:08 (AUG)	2005:07 (JUL)	2005:06 (JUN)	2005:05 (MAY)	2005:04 (APR)	2005:03 (MAR)	2005:02 (FEB)	2005:01 (JAN)	2004:12 (DEC)	2004:11 (NOV)
A)	GENERAL INDEX	551.00	550.00	553.00	548.00	542.00	540.00	538.00	529.00	527.00	529.00	525.00	525.00	526.00	521.00	525.00
A.1)	FOOD GROUP		539.00	548.00	538.00	530.00	527.00	525.00	512.00	509.00	507.00	502.00	501.00	504.00	505.00	514.00
A.2)	PAN. SUPARI, TOBACCO & INTOXICANTS		691.00	688.00	688.00	686.00	686.00	685.00	683.00	683.00	682.00	681.00	677.00	679.00	681.00	677.00
A.3)	FUEL & LIGHT		590.00	586.00	583.00	578.00	570.00	565.00	566.00	569.00	620.00	619.00	630.00	630.00	625.00	620.00
A.4)	HOUSING		727.00	727.00	727.00	727.00	727.00	727.00	713.00	713.00	713.00	713.00	713.00	713.00	651.00	651.00
A.5)	CLOTHING, BEDDING & FOOTWEAR		353.00	353.00	353.00	355.00	354.00	354.00	354.00	353.00	352.00	350.00	349.00	348.00	346.00	344.00
A.6)	MISCELLANEOUS GROUP		555.00	548.00	547.00	544.00	544.00	542.00	539.00	538.00	536.00	535.00	535.00	531.00	529.00	527.00

Base Year : CPI-1960

Item Code	Items	1988:09 (SEP)	1988:08 (AUG)	1988:07 (JUL)	1988:06 (JUN)	1988:05 (MAY)	1988:04 (APR)	1988:03 (MAR)	1988:02 (FEB)	1988:01 (JAN)	1987:12 (DEC)	1987:11 (NOV)	1987:10 (OCT)	1987:09 (SEP)	1987:08 (AUG)	1987:07 (JUL)
A)	GENERAL INDEX	806.00	800.00	795.00	782.00	771.00	763.00	753.00	749.00	753.00	752.00	755.00	750.00	745.00	736.00	724.00
A.1)	FOOD GROUP															