

EMPLOYEES' PROVIDENT FUND - AFTERMATH OF VIDYAMANDIR CASE AND EPFO'S CAUTION

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On February 28, 2019, the Hon'ble Supreme Court, vide its judgement in the case of *The Regional Provident Fund Commissioner (II) West Bengal Others* (clubbed with other civil appeals) ("**Vidyamandir Case**"), re-affirmed the position concerning inclusion of certain allowances for determining the p

The question of law raised in the Vidyamandir Case was whether special allowances paid by an establishment to its employees would fall within the am under section 2(b)(ii) read with section 6 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("**EPF Act**"), for computation of contribution.

The Hon'ble Supreme Court reiterated and observed that the test for determining whether any payment would form part of 'basic wages' was one payment was given to all employees or was variable or performance/incentive based. In our earlier article¹, we have discussed in detail the observati Court in the Vidyamandir Case.

Post-Vidyamandir Actions:

Pursuant to the decision of the Vidyamandir Case, the Employees' Provident Fund Organization ("**EPFO**") issued a notice dated March 14, 2019 wher Vidyamandir Case and stated that "*Thereafter, this order of Hon'ble Apex Court is circulated to all concerned for information, utilizing this judgm and **taking necessary action** keeping the aforesaid judgment of the Hon'ble Supreme Court.*"

Subsequently given the lack of clarity concerning the retrospective or prospective effect of the judgement of the Vidyamandir Case (possibly due tc principles), several field offices launched a fishing expedition and issued inquiry/inspection notices to employers proposing inspection of records of the wage structure as well as the allowances which may have been excluded from 'basic wages'.

Thereafter, a review petition was also filed against the judgement of the Vidyamandir Case which was dismissed by the Hon'ble Supreme Court on Aug

EPFO's Clarification:

Considering the massive confusion caused post the Vidyamandir Case, the EPFO on August 28, 2019, published a circular ("**EPFO Circular**") wherein i several field offices against employers proposing inspection of the records of the previous 3-5 years, primarily for the purpose of determining allowanc the 'basic wage' of the employees and had been excluded. EPFO categorically stated that there is no reason or justification to initiate such roving it compliant establishments.

Furthermore, EPFO also directed that all notices issued without any prima facie evidence to avoid EPF liability should not be pursued any further. Any i be initiated will require prior permission of the Central Analysis & International Unit ("**CAIU**") and such inspection will be for cases having credible basis engaged in avoidance of liability under the EPF Act.

The EPFO Circular also prescribed that in ongoing cases under section 7A of the EPF Act, no coercive steps be taken in case of recovery of dues (forming part of the 'basic wages' and having nexus with the principles reiterated in the Vidyamandir Case till the review petition against the judgement (disposed of by the Supreme Court. Given that the review petition has been dismissed, the aforesaid conditions have no further bearing on the ongoing c

Introduction of EPF Amendment Bill for amending the EPF Act:

Interestingly, amidst the confusion caused by the Vidyamandir Case and the notices for inspection issued by several field offices asking for records for Labour and Employment on August 23, 2019 also published a draft of the Employees' Provident Funds and Miscellaneous Provisions (Amendment) B for comments from the public and stakeholders.

Some of the key features of the EPF Amendment Bill are:

- Deletion of the term "basic wages" as specified in the EPF Act and introduction of the term "wages". The term "wages" specifies a list of paymen the definition of "wages". There is however no reference to exclusion of 'allowances' (other than house rent allowance and overtime allowance) i definition of "wages". However, in the event that certain payments made under such exempted list exceeds 50 per cent or such other percentage excessive amount shall be deemed as remuneration and will be included within the "wages". This proposed definition is also in tandem with the d the Code of Wages, 2019.

Also, the term "wages" under the EPF Bill includes the dearness allowance as well as retaining allowance, which were originally excluded from c definition of "basic wages" under the EPF Act but made inclusive under section 6 of the EPF Act for the purposes of determining the provident fi EPF Act.

- Prescription of a limitation period of 5 years for initiation of inquiry from the date on which dispute has arisen for (a) determination of t establishment; or (b) determination of amounts due from an employer under the EPF Act.

Conclusion:

The EPFO Circular comes as a big relief to *bona fide* establishments and employers who may have received such notices, without any prima facie caus saved from the unnecessary burden of explaining and justifying their records to the EPFO. Given the mayhem created in the aftermath of the Vidyam the EPFO Circular concerning cessation of baseless inquiries and requiring prior permission from the CAIU for initiating investigation/inspection only step for the harassed employers.

Meanwhile, providing a limitation period for initiation of inquiry is beneficial given the lack of limitation period for inspection of records under the EP "wages" in conformity with the Code of Wages, 2019 under the EPF Amendment Bill will hopefully reduce the disputes and confusion arising from it under the current definition of 'basic wages' under the EPF Act.

Endnotes:

[1]<http://www.mondaq.com/india/x/788888/employee+rights+labour+relations/Supreme+Court+ReAffirms+The+Inclusion+Of+Allowances+For+Determini>

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