



Study Notes

**The Employees' Provident
Fund & Miscellaneous
Provisions Act, 1952
(Part I)**

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952

Sections	Description
Section 1	Short title, extent and application
Section 2	Definitions
Section 2A	Establishment to include all departments and branches
Section 3	Power to apply Act to an establishment which has a common provident fund with another establishment
Section 4	Power to add to Schedule I
Section 5	Employees' Provident Fund Schemes
Section 5A	Central Board
Section 5AA	Executive Committee
Section 5B	State Board
Section 5C	Board of Trustees to be body corporate
Section 5D	Appointment of officers
Section 5DD	Acts and proceedings of the Central Board or its Executive Committee or the State Board not to be invalidated on certain grounds
Section 5E	Delegation
Section 6	Contributions and matters which may be provided for in Schemes
Section 6A	Employees' Pension Scheme
Section 6C	Employees' Deposit-linked Insurance Scheme
Section 6D	Laying of schemes before Parliament
Section 7	Modification of Scheme
Section 7A	Determination of moneys due from employers
Section 7B	Review of orders passed under section 7A
Section 7C	Determination of escaped amount
Section 7D	Tribunal
Section 7I	Appeals to Tribunal
Section 7J	Procedure of Tribunals
Section 7K	Right of appellant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers
Section 7L	Orders of Tribunal
Section 7O	Deposit of amount due, on filing appeal
Section 7P	Transfer of certain applications to Tribunals
Section 7Q	Interest payable by the employer
Section 8	Mode of recovery of moneys due from employers
Section 8A	Recovery of moneys by employers and contractors
Section 8B	Issue of certificate to the Recovery Officer
Section 8C	Recovery Officer to whom certificate is to be forwarded

Section 8D	Validity of certificate and amendment thereof
Section 8E	Stay of proceedings under certificate and amendment or withdrawal thereof
Section 8F	Other modes of recovery
Section 8G	Application of certain provisions of Income-tax Act
Section 9	Fund to be recognised under Act 11 of 1922
Section 10	Protection against attachment
Section 11	Priority of payment of contributions over other debts
Section 12	Employer not to reduce wages, etc
Section 13	Inspectors
Section 14	Penalties
Section 14A	Offences by companies
Section 14AA	Enhanced punishment in certain cases after previous conviction
Section 14AB	Certain offences to be cognizable
Section 14AC	Cognizance and trial of offences
Section 14B	Power to recover damages
Section 14C	Power of court to make orders
Section 15	Special provisions relating to existing provident funds
Section 16	Act not to apply to certain establishments
Section 16A	Authorising certain employers to maintain provident fund accounts
Section 17	Power to exempt
Section 17A	Transfer of accounts
Section 17AA	Act to have effect notwithstanding anything contained in Act 31 of 1956
Section 17B	Liability in case of transfer of establishment
Section 18	Protection of action taken in good faith
Section 18A	Authorities and inspector to be public servant
Section 19	Delegation of powers
Section 20	Power of Central Government to give directions
Section 21	Power to make rules
Section 22	Power to remove difficulties
Schedule I	Industries
Schedule II	Matters for which provision may be made in a scheme
Schedule III	Matters for which provision may be made in the pension scheme
Schedule IV	Matters to be provided for in the Employees' Deposit- Linked Insurance Scheme

Introduction

- Provident Fund has come into force to give better future to employees on their **retirement** and his **dependants in case of his death during employment**.
- The employee provident fund is administered by the **Employees Provident Fund Organization**, under the **Ministry of Labor and Employment**.
- The Act is administered by **Central Provident Fund Commissioner**.
- The following **3 schemes** have been framed under the Act
 - ✓ The Employees Provident Fund Scheme, 1952
 - ✓ The Employees Pension Scheme, 1995
 - ✓ The Employees Deposit Linked Insurance Scheme, 1976

Applicability of the Act (Section 1)

- The Act **extends to whole of India**.
- The Act applies to
 - ✓ Every establishment which is a factory
 - Engaged in any industry specified in schedule I
 - In which 20 or more persons are employed
 - ✓ Any other establishment or class of such establishments, employing 20 or more persons, which the Central Government may specify by a notification in the official gazette.
- Central Government may extend this Act to any establishment employing less than 20 persons. For this purpose, it has to give at least 2 months notice by a notification in the Official Gazette
- Where the employer and employees have agreed that this Act shall be made applicable to their establishment and made a request to the Central Provident Fund Commissioner, he may apply this Act to that establishment.

- While calculating the limit of 20 persons, even employees drawing salary above Rs 15000 per month, will have to be included.

Important Definitions (Section 2)

- **Appropriate Government** means
 - ✓ **In relation to establishment**
 - a) belonging to, or under the control of, the Central Government,
 - b) having departments/branches in more than one State,
 - c) of a major port, mine, oilfield or railway company, the Central Government,
 - ✓ **In any other case**, the State Government.

- **Authorized Officer** means
 - ✓ Central Provident Fund Commissioner
 - ✓ Additional Central Provident Fund Commissioner
 - ✓ Deputy Provident Fund Commissioner
 - ✓ Regional Provident Fund Commissioner

- **Basic wages** means **all emoluments** which are earned by an employee while on duty or on leave or on holidays with wages as per the contract of employment but **does not include**
 - ✓ Cash value of any food concessions
 - ✓ Any dearness allowance, house rent allowance, overtime allowance, bonus, commission or pay
 - ✓ Any presents made by the employer

- **Employer** means
 - ✓ **In relation to an establishment which is a factory** : Owner or occupier of the factory including the agent/legal representative or manager of the factory
 - ✓ **In relation to any other establishment** : The person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent

- **Employee** means any person who is-
 - a) **Employed for wages**,
 - b) **Employed in any kind of work**, manual or otherwise
 - c) **Gets his wages** directly or indirectly from the employer **and includes**
 - Any person employed by or through a contractor in or in connection with the work of establishment
 - Any person engaged as an apprentice

- **Exempted Employee** means an employee to whom a scheme/ the insurance scheme as the case may be would, but for the exemption granted under Section 17, have applied.

- **Exempted Establishment** means an establishment 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 or the insurance scheme.

- **Factory** means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power.

- **Industry** means an industry specified in Schedule I, and includes any other industry added to the Schedule by notification under Section 4
- **Manufacture or Manufacturing Process** means any process for making, altering, repairing, ornamenting, finishing, packing, washing, cleaning, breaking up, demolishing, otherwise treating or adapting any, article or substance with a view to its use, sale, transport, delivery or disposal.
- **Occupier of a factory** means the person who has ultimate control over the affairs of the factory and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory
- **Establishment to include all departments and branches (Section 2A)** : If an establishment consists of different departments or has branches whether situated in the same place or in different places, all such departments shall be treated as parts of the same establishment.
- The Central government has power **to apply the Act to an establishment** which has a common Provident Fund with another establishment (Section 3)
- The Central Government also has the power, by virtue of Section 4, **to add to Schedule I any other industry** in respect of the employees whereof it is of the opinion that a provident fund scheme should be framed under this Act (Section 4)

Employees' Provident Fund Scheme, 1952 (Section 5)

- The Central Government may, by notification in the Official Gazette, **frame a scheme** to be called Employees' Provident Funds Scheme, 1952 for the employees or class of employees of establishments to which the Act applies.
- It may also specify the establishments or class of establishments to which the said scheme is to apply. The Scheme may provide for all or any of the matters specified in Schedule II of the EPF Act, 1952.
- Immediately after framing the Scheme, **a Fund** shall be established.
- The fund and scheme shall be administered by the **Central Board of Trustees**.

Central Board (Section 5A)

- The Central Government is empowered to constitute **Board of Trustees called Central Board** for administering the Employee's Provident Fund. This has to be exercised through a **Gazette Notification**.

- **Constitution of Board**: It shall consist of the following persons as members
 - ✓ A **chairman and a vice- chairman** to be appointed by the Central Government.
 - ✓ The **Central Provident Fund commissioner** as ex-officio member.
 - ✓ Not more than **5 persons** appointed by the Central Government from **amongst its officials**
 - ✓ Not more than **15 persons** representing Governments of such **states** as the Central Government may specify, in this behalf, appointed by Central government.
 - ✓ **10 persons** representing **employers** of the establishments to which the Scheme applies, appointed by the Central Government.
 - ✓ **10 persons** representing **employees** in the establishments to which the Scheme applies, appointed by the Central Government

- **Rights of Central Board of Trustees**
 - ✓ Right to **administer the fund**
 - ✓ Right to **perform other functions** as required under Provident Fund Scheme, Family Pension Scheme and the Insurance Scheme
 - ✓ Right to **appoint officers** like Additional, Deputy, Regional or Assistant Provident Fund Commissioners and other staff for efficient administration of the Scheme.
 - ✓ Right to **delegate its powers and functions** to Executive Committee or to the Chairman of the Board or to any of its officers for efficient administration of the Scheme(Section 5E)

- **Duties of Central Board of Trustees**
 - ✓ Duty to **maintain proper accounts** of its income & expenditure relating to the fund.
 - ✓ **Audit :**
 - The accounts of the Central Board shall be **audited by** the **Comptroller and Auditor General of India**
 - **Audit fees** shall be paid by the Central Board
 - The CAG and any person appointed for audit purpose, shall have the **right to inspect books, vouchers, documents** etc and inspect any of the offices of the Central Board.
 - ✓ Duty to **forward audit report to the Central Govt**, certified copies of which is handed over by the CAG to the Central Board
 - ✓ Duty to **submit annual report of its activities** to the Central Government.
 - ✓ The Central Government shall **place a copy** of the Annual Report, Audited accounts, Audit report, and the comments of the Central Board, **before each House of Parliament.**

Executive Committee (Section 5AA)

- The Central Government may, by notification in the official Gazette, constitute an **Executive Committee** to **assist the Central Board**
- **Constitution of the Executive Committee:**
 - ✓ A **Chairman** appointed by the Central Government from amongst the members of the Central Board
 - ✓ **two persons** appointed by the Central Government from **amongst its officials**
 - ✓ **three persons** appointed by the Central Government from such **States** as the Central Government may specify in this behalf
 - ✓ **three persons** representing the **employers** elected by the Central Board from amongst such persons present in Board
 - ✓ **three persons** representing the **employees** elected by the Central Board from amongst such persons present in Board
 - ✓ the **Central Provident Fund Commissioner**, *ex officio*
- **State Board (Section 5B)** : The Central Government may constitute **Board of Trustees for the State** in consultation with the Government of that State. The State Board shall exercise such powers and perform such duties as the Central Government may assign to it from time to time.
- **Board of Trustees to be body corporate (Section 5C)** : The above Central Board or the State Board shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal.

Appointment of Officers (Section 5D)

- The Central Government
 - ✓ Shall appoint a **Central Provident Fund Commissioner**- who shall be Chief Executive Officer of the Central Board – subject to general control and superintendence of that Board.
 - ✓ May appoint a **Financial Advisor and Chief Accounts Officer** to assist the Central Provident Fund Commissioner
- The **Central Board may appoint**
 - ✓ Additional Central Provident Fund Commissioners
 - ✓ Deputy Provident Fund Commissioners
 - ✓ Regional Provident Fund Commissioners
 - ✓ Assistant Provident Fund Commissioners

For efficient administration of the Scheme, the Pension Scheme and the Insurance Scheme.

- Appointment to post of
 - ✓ Central Provident Fund Commissioners
 - ✓ Additional Central Provident Fund Commissioners
 - ✓ Financial Advisor
 - ✓ Chief Accounts OfficerOr any other post under the Central Board equivalent to scale of pay of any Group A or Group B post shall be made **after consultation with UPSC**.

- Such consultation is **not necessary** in regard to any appointment
 - ✓ For a **period not exceeding 1 year**
 - ✓ If the person to be appointed is a member of
 - **Indian Administrative Services**
 - In the Service of the Central Government or a State Government or the Central Board in a **Group A or Group B** post.

Contributions (Section 6)

- The employer's contribution to the fund shall be **10% of the basic wages**, dearness allowance and retaining allowance (if any)
- An employee's contribution is **equal to that of employer** and he can at his own will contribute beyond 10%.
- The employer shall not be under an obligation to pay any contribution over and above his payable contribution.
- The **Central Government** may raise the aforesaid percentage of contribution from **10% to 12%** in respect of any establishments
- If the amount of contribution involves fraction of a rupee, the Scheme may provide for rounding off such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

Employees' Pension Scheme (Section 6A)

- The Central Government may frame a scheme to be called the **Employees' Pension Scheme**
- The Scheme will provide for
 - ✓ **superannuation pension, retiring pension or permanent total disablement pension** to the employees of any establishment or class of establishments to which this Act applies; and
 - ✓ **widow or widower's pension, children pension or orphan pension** payable to the beneficiaries of such employees
- A **Pension Fund** shall be established into which there shall be paid from time to time
 - ✓ **Employer's contribution** not exceeding **8.33%** of the basic wages, dearness allowance and retaining allowance, if any
 - ✓ such sums as are payable by the employers of exempted establishments under sub-section (6) of section 17

- ✓ the **net assets of the Employees' Family Pension Fund** as on the date of the establishment of the Pension Fund
- ✓ **such sums as the Central Government** may, after due appropriation by Parliament by law in this behalf
- On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate
- The **Pension Fund** shall **vest in and administered by the Central Board**.
- The Pension Scheme may provide for all or any of the matters specified in **Schedule III**.

Employees' Deposit Linked Insurance Scheme (Section 6C)

- The scheme established the purpose of providing life **insurance benefits** to the employees
- A **Deposit linked Insurance Fund** is to be established in which the employer shall pay such amount not more than **1% of the aggregate** of the basic wages, dearness allowance and retaining allowance (if any)
- The employer shall pay into the Insurance Fund such **further sums of money**, not exceeding **one-fourth** of the contribution which he is required to make to **meet all the expenses** in connection with the administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that scheme.
- The **Insurance Fund** shall **vest in the Central Board** and be administered by it in such manner as may be specified in the Insurance Scheme
- The Insurance Scheme may provide for all or any of the matters specified in **Schedule IV**.
- The Central Government may, by notification in the Official Gazette, **add to amend or vary**, either prospectively or retrospectively, the Scheme, the Family Pension Scheme or the Insurance Scheme, as the case may be (Section 7)

Determination of moneys due from employers (Section 7A)

- This section **gives power to authorities** like Central PF Commissioner, Additional Central PF Commissioner, Deputy PF Commissioner or any Regional PF Commissioner or any Assistant PF Commissioner
 - ✓ to decide a dispute regarding the applicability of this Act to an establishment and
 - ✓ determine the amount due from the employer under the provisions of the Act and the Schemes.
- This **involves decisions** on various points of **quasi-judicial** nature i.e.
 - ✓ Amount due as contribution
 - ✓ The date from which the same is due
 - ✓ The administrative charges
 - ✓ Amount to be transferred under Sections 15 or 17 of the Act
 - ✓ Any other charges payable by the employer under the Act

- The authorities have been given power **to conduct such enquiry** as may be deemed necessary and for this they have been granted powers as are vested in Court.
- Any person may apply for **review of orders passed under Section 7A**(Section 7B)
 - ✓ On the discovery of new and important matter or evidence or
 - ✓ On account of some mistake or error apparent on the face of record or
 - ✓ For any other sufficient reason

Determination of Escaped Amount (Section 7C)

- In certain cases, previously passed orders determining the amount due from an employer may need to be re-opened. The officer who has passed the orders may re-open if he has reason to believe that previously the **amount was undetermined** due to-
 - ✓ **Omission of any information** or failure to disclose all material facts, by the employer, necessary for determining the correct amount due
 - ✓ **In consequence of the information available** in the hands of the officer, though there has been no omission or failure to disclose information on part of the employer.
- Such **re-opening can be done** within a period of five years from the date of communication of the original order
- Before passing such order, employer must be given an opportunity of being heard.

Tribunal (Section 7D)

- **Tribunal for the purpose of this Act**- shall be Industrial Tribunal established under Industrial Disputes Act, 1947.
- **Appeals to Tribunal(Section 7I)** - Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority except an order rejecting an application for review **may prefer an appeal to a Tribunal** against such notification or order
- **Procedure of Tribunals(Section 7J)**- A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Tribunal shall have its sittings
- A person preferring an appeal to a Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal(Section 7K)

- **Orders of Tribunal (Section 7L)** : A Tribunal may after giving the parties to the appeal, an opportunity of being heard, confirm, modify or annul the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary
- A Tribunal may, at any time within **five years** from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it
- **Deposit of amount due, on filing appeal (Section 7O)**—No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it **seventy-five per cent** of the amount due from him as determined by an officer referred to in section 7A
- **All applications** which are **pending before the Central Government** under section 19A before its repeal, shall stand **transferred to a Tribunal** exercising jurisdiction in respect of establishments in relation to which such applications had been made as if such applications were appeals preferred to the Tribunal (Section 7P)
- The employer shall be liable to pay **simple interest** at the rate of **twelve per cent** per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment (Section 7Q)