KHAITAN &CO
Advocates since 1911

UPDATE

# ERGO

*Analysing developments impacting business*

## SUPREME COURT LIMITS THE SCOPE OF "EXCLUDED EMPLOYEE" UNDER 1952 EPF SCHEME

29 March 2019

On 26 March 2019, in the matter of *Modern Transportation Consultation Services Private Limited & Anr. v Central Provident Fund Commissioner Employees Provident Fund Organisation & Ors. (Civil Appeal No. 7698 of 2009)*, a bench comprising Justices Abhay Manohar Sapre and Dinesh Maheshwari of the Supreme Court (Supreme Court), elucidated the meaning and scope of an "excluded employee" for the purpose of the Employees' Provident Funds Scheme 1952 (1952 Scheme) in relation to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act).

### BACKGROUND

A special leave petition had been filed from the decision of a division bench of the Calcutta High Court (Calcutta HC) which had reversed the decision of a single judge of the Calcutta HC. The decision of the single judge of the Calcutta HC emanated pursuant to a writ petition filed by the appellant-company. The question arising for determination in this appeal was whether retired employees of the Indian Railways, who had withdrawn all accumulations in their provident fund accounts that were not created under the 1952 Scheme, were to be treated as "excluded employees" in terms of paragraph 2(f) of the 1952 Scheme.

The basic contention urged in this matter on behalf of the appellant-company was that the persons engaged by them had been the members of General Provident Fund (GPF) during their employment with the Indian Railways. These employees had withdrawn all superannuation benefits including provident fund and pension from the GPF and were, therefore, to be treated as "excluded employees" within the meaning of paragraph 2(f) of the 1952 Scheme for the purpose of the fund created thereunder.

However, the Employees' Provident Fund Organisation (EPFO) authorities maintained that the employees of an establishment were eligible for enrolment as members of the 1952 Scheme; and the employees of the appellant company were not "excluded employees" for the purpose of the 1952 Scheme. In this context, the appellant-company having failed to remit the requisite contribution in relation to the employees concerned, the competent authority under the EPF Act commenced proceedings under Section 7A, for determination of the money due from the appellant-company.

The authority, after having heard the appellants, determined the amount payable by the appellant-company under various heads, holding that a person was entitled to draw double or multiple pension/s in the manner illustrated hereinabove (i.e. under both the GPF and 1952 Scheme) because the provisions of the EPF Act were not inconsistent

with the GPF Scheme. Therefore, retirement of the employees from Railways would not take them within the definition of "excluded employees".

In this background, the appellant company preferred a writ petition before the Calcutta HC. The matter was first heard by a single judge of the High Court who was of the opinion that such employees would fall within the scope of "excluded employees" and were therefore outside the purview of the EPF Act and the 1952 Scheme. This decision was then appealed by means of a Letter's Patent Appeal preferred by EPFO (the respondent in the special leave petition) wherein a division bench of the Calcutta HC allowed the appeal. The division bench of the Calcutta HC was of the view that employees who retired after serving an exempted employer, would not fall within the category of "excluded employees" on re-employment and would be covered by the EPF Act and the 1952 Scheme. This decision was appealed by the appellant-company in the present Special Leave Petition.

## FINDINGS AND CONCLUSIONS BY THE COURT

At the outset, the Supreme Court observed that the concept underlying the enactment had been to provide for compulsory contributory provident funds for safeguarding the future of industrial workers.

In this background, it was held that the crucial aspect to be considered in this matter is as to whether the definition of "excluded employees" in paragraph 2(f) and the stipulation in paragraphs 26 and 69 of the 1952 Scheme refer to any provident fund or only to the fund under the 1952 Scheme. Significantly, it was emphasised that Clause (f) of paragraph 2 of the 1952 Scheme reads, "*an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of paragraph 69*"; and therefore refers to "the Fund" and not to "any Fund". Similarly, paragraphs 26 and 69 also refer to "the Fund" and not to "any Fund". The usage of the word "the" as opposed "any" before "fund", in the opinion of the Supreme Court, makes it evident that the reference therein is only to the 1952 Scheme and not a general reference to any fund.

The Court further rejected the concern of the single judge of the Calcutta HC that if clause (i) of paragraph 2(f) of the 1952 Scheme has to be applied in relation to the withdrawal from any provident fund, an employee may keep on successively deriving benefits, remain rather unwarranted because the principle underlying the EPF Act and the 1952 Scheme is to provide financial security to the employees. The Supreme Court, in fact, went as far as to say that the area of operation of this exclusion clause cannot be expanded by way of an assumption about the alleged extra advantage likely to be driven home by an employee.

In line with such interpretation of the EPF Act and the 1952 Scheme, the Supreme Court held that the retired railway employees, who had withdrawn their accumulations in GPF or any other Fund of which they were members, could not have been treated as "excluded employees" for the purpose of the 1952 Scheme, for the reason that such a withdrawal had not been from the fund established thereunder.

## *COMMENTS*

The judgement of the Supreme Court has only reinforced and reiterated the socio-benevolent nature of the legislation and the laws framed thereunder, wherein where there were two possible interpretations, the Supreme Court has favoured interpretation to the advantage of the employee. In the present case however, the Supreme Court has not travelled far to reach such a conclusion, given that the even applying general rules of interpretation to the statute would have resulted in a reading of the provisions in favour of the employees.

Employers may consider revisiting / reviewing contributions omitted to be made by them under the assumption that employees that may have withdrawn all their accumulations under any fund (not being one constituted under the 1952 Scheme), by treating them as excluded employees. This would ensure that the employers avoid scrutiny by the provident fund authorities and determination of a sum due from the employer by taking recourse to Section 7A of the EPF Act.

- *Jeevan Ballav Panda (Partner), Satish Padhi (Senior Associate) and Meher Tandon (Associate)*

For any queries please contact: editors@khaitanco.com



**Mumbai**
One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

**New Delhi**
Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

**Bengaluru**
Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

**Kolkata**
Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com