



JSA Prism Employment Law

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Delhi High Court upholds mandatory membership of the Employees' Provident Fund Organisation and contributions for international workers

In the recent cases of *Spice Jet Limited vs. Union of India and Anr.*¹ and *LG Electronic India Private Limited vs. Union of India and Anr.*², a 2 (two) judge bench of the High Court of Delhi ("Delhi HC") ruled that international workers employed in India are mandated to become members of the Employees' Provident Fund ("EPF") Organisation ("EPFO") and contribute to the EPF, formed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("EPF Act"), irrespective of their income. While emphasising on the distinction between foreign employees working in Indian establishments and domestic employees, the Delhi HC has further clarified that international workers may withdraw the amount in the EPF only on retirement from services.

Challenge before the Delhi HC

The petitioners, through separate writ petitions filed under Article 226 of the Constitution of India ("Constitution"), challenged 2 (two) notifications, one, dated October 1, 2008³, under which paragraph 83 was inserted in the EPF Scheme, 1952 ("Scheme") and was made applicable to international workers ("Notification 1"), and the other, dated September 3, 2010⁴, which substituted paragraph 83 of the Scheme with certain modifications ("Notification 2" and together with Notification 1, the "Notifications").

Under the Notifications, an 'excluded employee' has been defined to mean an international worker who is contributing to a social security programme of his/her country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on reciprocity basis and is enjoying the status of a detached worker under the terms of such agreement. On account of insertion of paragraph 83 in the Scheme, every international worker to which the Scheme applies, other than an excluded employee, is required to become a member of the EPFO and contribute to the EPF. Further, as per the Notifications, an international worker is permitted to withdraw the full amount standing to their credit in the EPF only on their retirement from services after attainment of 58 (fifty-eight) years of age and on account of permanent and total incapacity to work due to infirmity. In effect, irrespective of whether the quantum of pay drawn by them on a monthly basis exceeds INR 15,000 (Indian Rupees Fifteen Thousand) or not, international workers who are not excluded, must become members of the EPFO and accordingly contribute to the EPF.

The petitioners in the present cases challenged the Notifications and sought an order in the nature of writ of certiorari to quash the same on the following grounds:

¹ W.P.(C) 2941/2012 (decided on November 4, 2025)

² W.P.(C) 6330/2021 & CM APPL. 19949/2021 (decided on November 4, 2025)

³ Notification bearing number GSR 706(E)

⁴ Notification bearing number GSR 148

1. requiring non-excluded international workers to become members of EPFO and contribute to the EPF irrespective of their income was violative of Article 14 of the Constitution;
2. permitting foreign employees to withdraw the credit amount in their respective EPF only upon retirement from services was unreasonable as such employees come to India for employment for a short duration of 2 (two) to 5 (five) years; and
3. the Notifications distinguishing between domestic and foreign employees was *ultra vires* of the EPF Act.

To support the above grounds, the petitioners placed reliance on the case of *Stone Hill Education Foundation vs. Union of India*⁵, where the High Court of Karnataka ("**Karnataka HC**") had struck down paragraph 83 of the Scheme as being unconstitutional and had held that subjecting international workers to mandatory EPF contributions without any wage ceiling resulted in unequal treatment of foreign employees working in Indian establishments and domestic employees, thereby violating Article 14 of the Constitution.

Issues

The issues presented before the Delhi HC were:

1. whether the distinction between foreign employees and domestic employees, where foreign employees are required to contribute to the EPF irrespective of their income, and domestic employees are required to contribute to the EPF only if their monthly pay is equal to or below the prescribed contribution ceiling of INR 15,000 (Indian Rupees Fifteen Thousand), is violative of Article 14 of the Constitution; and
2. whether it is unreasonable and arbitrary for the Scheme to permit international workers to withdraw the credit amount in the EPF only on retirement from service, considering such employees come to India for serving the establishment for a short duration of 2 (two) to 5 (five) years.

Analysis and findings

In addressing the above issues, the Delhi HC examined the meaning of 'equal protection' enshrined under Article 14 of the Constitution and observed that equal protection means 'right to equal treatment in similar circumstances', signifying that the principle of equality is not universally applicable, but applicable to all persons who are similarly situated, by nature, attainment and circumstances. Relying on the observations made by the Supreme Court of India ("**Supreme Court**") in the case of *Union of India vs. N.S. Rathnam and Sons*⁶, the Delhi HC further elaborated that in order to determine whether the classification between domestic and foreign employees on the basis of applicability of the Scheme infringes Article 14 of the Constitution, the preliminary question is whether such classification passes the test of permissible classification and contains any intelligible differentia.

The Delhi HC concurred with the respondents' argument that foreign employees are engaged in India for a brief period and their EPF contributions are limited to their short-term employment, in contrast to domestic employees who are obligated to contribute until retirement from services, thereby bearing greater economic duress. Further, it opined that the right to equality permits reasonable classification, and the distinction established under the Scheme rests on the rationale of economic duress and social security objective of the Scheme, and thus, is not violative of Article 14 of the Constitution.

To clarify the basis of its decision, the Delhi HC evaluated judgements cited by the parties in their submissions. The Delhi HC disagreed with the ruling of the Karnataka HC that had declared paragraph 83 of the Scheme as unconstitutional and arbitrary, noting that the ruling had failed to consider the reasonability of classification based on the economic duress faced by domestic employees, which is absent in case of foreign employees. Conversely, aligning with the verdict passed by the High Court of Bombay ("**Bombay HC**") in the case *Sachin Vijay Desai vs. Union of India*

⁵ (2024) SCC Online Kar 49

⁶ (2015) 10 SCC 681

*and Ors.*⁷ that upheld imposition of EPF contributions on international workers, the Delhi HC's ruling supported the stance that international workers form a separate and distinct class with different social security arrangements.

Conclusion

The Delhi HC's judgment in the present cases diverge from the Karnataka HC's interpretation, which had previously taken a more restrictive view on the applicability of the Scheme's provisions to international workers. Conversely, the Delhi HC's view aligns closely with the Bombay HC's stance, affirming the validity of the Notifications and upholding mandatory EPF contributions for expatriates. With conflicting positions amongst High Courts, the matter may ultimately be presented before the Supreme Court, which could provide the final interpretation and settle the legal uncertainty surrounding paragraph 83 of the Scheme and its applicability to international workers.

⁷ Writ Petition No. 1846 of 2018

Employment Practice

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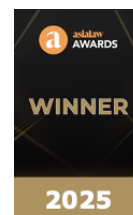
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