

PAS Flash News

Karnataka High Court ruling - International Worker provisions under the Provident Fund law held to be unconstitutional and arbitrary

EY Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

On 25 April 2024, the Hon'ble High Court of Karnataka delivered a judgement (W.P. No.18486/2012 and others) striking down the special provisions for 'international workers' under Para 83 of the Employees' Provident Funds Scheme, 1952 (Provident Fund Scheme) and Para 43A of the Employees' Pension Scheme, 1995 (Pension Scheme) as being unconstitutional and arbitrary.

The said provisions were introduced by the Central Government vide notification dated 1 October 2008 requiring international workers to contribute in to the Provident Fund.

The question before the Karnataka High Court in this matter was - "*Whether introduction of para 83 of Provident Fund Scheme and para 43A of Pension Scheme is unconstitutional and hit by Article 14 of Constitution of India.*"

The petitioners contended that these provisions are arbitrary and discriminatory and are hit by Article 14 of the Constitution of India. Their grievance was that international workers are covered under the Provident Fund Scheme irrespective of salary drawn whereas domestic workers who draw monthly pay exceeding the prescribed statutory ceiling (i.e. INR15,000 per month) are outside the purview of the Provident Fund Scheme. The petitioners further argued that international workers work in India only for a limited period and requiring them to pay contributions on their entire global salary would cause irreparable injury.

We understand from the text of the ruling that the Karnataka High Court struck down the special provisions for International Workers as unconstitutional and arbitrary, relying, amongst other things, on the following:

- ▶ The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ('Provident Fund Act') was enacted to ensure that employees with lower salary brackets get retirement benefits and by no stretch of imagination, could it be said that employees who draw higher salary should be given benefit under the law. The Provident Fund Scheme is in the nature of subordinate legislation and therefore, the subordinate legislation cannot travel beyond the scope of mother law (the Provident Fund Act).
 - ▶ Non-citizen employees working in India and employees who are citizens of India are 'equals' when working in India. Any regulation that treats equals differently violates Article 14 of the Constitution of India which prescribes 'equality before law'.
 - ▶ On coverage of international workers vs domestic workers - Keeping in view the aims and objects of the Provident Fund Act, when a ceiling of INR 15,000 per month has been placed as a threshold for an employee to be a member under the Provident Fund Scheme, Para 83 of the Provident Fund ought not to have an unlimited threshold for international workers while denying the same benefit to Indian workers.
- ▶ On contributions for international workers vs domestic workers - The distinction in the amount of contribution between an Indian employee going to a country with which India has not entered into a Social Security Agreement (non-SSA country) and a foreign passport holder employee from non-SSA country working in India is discriminatory and violative of Article 14 of the Constitution. The demand for contribution on global salary i.e. salary earned by an international worker from some other country or in home country is arbitrary and hit by Article 14 of the Constitution.

We understand from our experience that such rulings may be challenged, including before a larger bench of the High Court and / or the Supreme Court of India. Until then, employers may analyse the impact of the ruling and devise their compliance strategy accordingly also considering the fact that similar writs are pending before other High Courts in the country.

Please note that the above narration is only a summary and is based purely on our understanding of the ruling. This summary should not be construed as any advice, including any advice that may only be provided by a qualified legal professional.

We will continue to monitor this space and share more information. Please feel free to reach out to:

Sonu Iyer
Partner, EY India
Sonu.Iyer@in.ey.com
+91-9810495178

Puneet Gupta
Partner, EY India
Puneet1.Gupta@in.ey.com
+91-9810384932

We hope you find this update useful.

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon
Temple, Off SG Highway
Ahmedabad - 380 059
Tel: + 91 79 6608 3800

Bengaluru

12th & 13th floor
"UB City," Canberra Block
No. 24, Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 6727 5000

Ground Floor, 'A' wing
Divyasree Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru - 560 025
Tel: + 91 80 6727 5000

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: + 91 172 6717800

Chennai

Tidel Park, 6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: + 91 44 6654 8100

Delhi NCR

Ground Floor
67, Institutional Area
Sector 44, Gurugram - 122 003
Haryana
Tel: +91 124 443 4000

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: + 91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: + 91 40 6736 2000

Jamshedpur

1st Floor, Fairdeal Complex
Holding No. 7, SB Shop Area
Bistupur, Jamshedpur - 831 001
East Singhbhum Jharkhand
Tel: + 91 657 663 1000

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: + 91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: + 91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: + 91 22 6192 0000

5th Floor, Block B-2
Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000

Pune

C-401, 4th floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 4912 6000

Ernst & Young LLP

EY | Building a better working world

About EY

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EYG member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

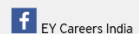
Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/en_in.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 9th Floor, Golf View Corporate Tower B, Sector 42, Golf Course Road, Gurugram, Haryana - 122 002.

© 2024 Ernst & Young LLP. Published in India.
All Rights Reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

ey.com/en_in



Download the EY India Tax Insights App