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Karnataka HC strikes down the applicability of employees' provident fund benefits to international workers

A single judge bench of the High Court of Karnataka ("**Karnataka HC**") in its recent judgement in ***Stonehill Education Foundation v. The Union of India & Ors.***[1] has struck down para 83 of the Employees Provident Fund Scheme, 1952 ("**EPF Scheme**") and para 43A of the Employees' Pension Scheme, 1995 ("**Pension Scheme**"), as wholly arbitrary and unconstitutional.

Brief Facts

The Parliament, *vide* notification dated October 1, 2008, introduced para 83 in the EPF Scheme and further para 43A under the Pension Scheme covering international workers ("**Amendment**").

Indian workers who were posted in other countries were required to make mandatory social security contributions in accordance with the laws of such countries. Despite the contribution made, such workers were not entitled to any social security benefits as the workers did not meet the minimum qualifying requirements of such countries. Hence, the Parliament, in the interest of international workers and in order to honour bilateral agreements with foreign countries, amended the Schemes to ensure that Indians deputed to work outside the country are not deprived of such benefits.

Accordingly, para 83(2) of the EPF Scheme defines "**international workers**" as under:

"*International Worker" means–*

a) an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to gain, under the said agreement;

b) an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the Act applies…"

Para 83(1) defines "**excluded employees**" as under:

"*excluded employee" means–*

1. an International Worker, who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on reciprocity basis and enjoying the status of detached worker for the period and terms, as specified in such an agreement; or

[1] W.P. No.18486/2012

2. an International Worker, who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a bilateral comprehensive economic agreement containing a clause on social security prior to 1st October 2008, which specifically exempts natural persons of either country to contribute to the social security fund of the host country;"

The said Amendment was challenged for the following reasons: (a) the object of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("**Act**") is to ensure compulsory contribution to provident fund for workers working in industrial undertakings. However, the Amendment intends to cover high-ranking officials which is opposed to the objective for which the Act was enacted; (b) while the Act provides for a threshold ceiling limit for contribution by the weaker sections, there is no ceiling limit for international workers; (c) there is also a heavy burden on the employers in the absence of a ceiling limit; and (d) there is no intelligible differentia of classification between an Indian employee and an international worker who is not covered under the social security agreement ("**SSA**") and hence there is no nexus between the object sought to be achieved under the Act and the schemes framed thereunder.

Issue

Whether introduction of para 83 of EPF Scheme and para 43A of Pension Scheme violate Article 14 of the Constitution of India ("**Article 14**") and is therefore unconstitutional.

Court Findings

The Karnataka HC struck down the Amendment on the following grounds:

1. The Amendment is in the nature of subordinate legislation and hence cannot travel beyond the scope of the Act. Keeping in view the aims and objects of the Act, when a ceiling amount of INR15,000 (Indian Rupees fifteen thousand) per month has been placed as a threshold for an employee to be a member to the fund, the Amendment ought not to have an unlimited threshold for international workers while denying the same benefit to Indian workers.
2. The Amendment is discriminatory in the treatment of the international workers of Indian origin and foreign origin and thus violative of Article 14. An Indian employee working in a non-SSA country continues to contribute on a meagre sum of INR 15,000 (Indian Rupees fifteen thousand) whereas a foreign worker from an SSA country, without a certificate of coverage, is made to contribute on his entire salary although by definition both are international workers. This distinction in the amount of contribution is discriminatory and violative of Article 14.
3. The contention of the respondents that the Amendment was introduced as a measure of reciprocity in order to honour SSAs between India and other countries falls flat in respect of international workers from non-SSA countries. An international worker from a non-SSA country is not allowed to withdraw the accumulation until he reaches the age of 58 (fifty-eight) years. Therefore, the Amendment eventually applies to international workers from non-SSA countries as well, and hence, the claim of reciprocity does not arise. There is no justification to demand a contribution on the entire pay of a foreign employee from a non-SSA country.
4. Citizen and non-citizen employees employed in India are equals and therefore cannot be treated differently. Article 14 applies to foreigners, and accordingly equal rights and protection are due to such foreigners. The classification made is unreasonable as it does not have intelligible differentia and there is no presence of nexus between the object of the Act and the basis of classification.

Conclusion

By striking down the Amendment, the Karnataka HC reiterated the position of law that any classification made without any reasonable basis should be regarded as invalid. This judgement also lays emphasis on how any amendment to any legislation should be in consonance with the legislative intent and objective of the Act. This is a welcome ruling both from the perspective of employers who will not be saddled with the additional financial burden and those employees

covered under this Amendment for whom recovery of amounts due to them, after the age of 58 (fifty-eight) years had proven difficult, if not impossible.

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