

**Circular No – 035/2024**

Date:08.05.2024

To

All Members of the Association

**KARNATAKA HIGH COURT JUDGMENT STRIKING DOWN  
PROVISIONS OF EPF AND PENSION SCHEMES RELATING TO  
INTERNATIONAL WORKERS**

1. The Association by Circular no. 32/2024 dated 25.04.2024 informed the members that Hon'ble High Court of Karnataka has held that paragraph 83 of Employees Provident Fund Scheme and Paragraph 43-A of the Employees' Pension Scheme which are applicable to the International Workers as unconstitutional being violative of the Article-14 of the Constitution of India and struck down the paragraphs by its judgment and order dated 25.04.2024.
2. Now, the judgment dated 25.04.2024 is uploaded on the website of the Hon'ble High Court of Karnataka.

Some of the key observations in the judgment are given below:

- "The aims and objects of introducing para 83 of the EPF Scheme as could be seen is, to protect the Indian employees going abroad to work from being subjected to the social security and the retirement clause of their host country which are prejudicial to their interest and to motivate these countries for entering into such agreements with India and to make it happen is to provide for reciprocal treatment to the nationals of these countries while they work in India.
- Para 83 of the EPF Scheme is in the nature of subordinate legislation and therefore, the subordinate legislation cannot travel beyond the



scope of the mother Act. Keeping in view the aims and objects of the main EPF & MP Act, when a ceiling amount of Rs.15,000/- per month has been placed as a threshold for an employee to be a member to the scheme, para 83 of the EPF Scheme ought not to have an unlimited threshold for international workers while denying the same benefit to Indian workers. There being no commonality of interest of the aims and objectives of EPF & MP Act, 1952 and para 83 of EPF Scheme, para 43A of EP Scheme (needs) to be struck down as incompatible, arbitrary, unconstitutional and ultra vires.

- An Indian employee working in a foreign country with SSA who is a member of EPF & MP Act, 1952 continues to contribute on meagre sum of Rs.15,000/- whereas, a foreign worker from SSA country, without a certificate of coverage, is made to contribute PF on his entire salary although both are by definition of international workers. The Government of India is unable to substantiate any nexus with the object sought to be achieved, para 83 is clearly discriminatory in treating the international workers of Indian origin and foreign origin differently and thus violative of Article 14 of the Constitution of India. The distinction in the amount of contribution between an employee going to a non- SSA country and an employee from a non-SSA country coming to India is clearly discriminatory and violative of Article 14. The demand for contribution on global salary i.e., salary earned by an international worker or remuneration received by an international worker from some other country or in home country should also be computed for the purpose of the contribution is on the face of it, arbitrary and hit by Article 14 of the Constitution of India.
- There is discrimination between the Indian employees working in a non-SSA country (who are not international workers as per definition) and foreign employees from a non-SSA working in India who are classified as international workers. There is no rational basis for this classification nor there is reciprocity that compels to classify



foreign employees from non-SSA countries as international workers. The respondents neither have stated whether the Indian employees working in non- SSA countries nor required to contribute their entire pay without statutory limit towards PF of that country. In the absence of parity and also in the absence of reciprocity, there is no justification to demand a contribution on the entire pay of a foreign employee from a non-SSA country.

- Non-citizen employees working in India and employees who are citizens of India are two different classes for some reason, when working in India are equal and equals are treated differently and hence, violates Article 14. The law must be enforced and administered equally among those who are equal. Article 14 applies to foreigners meaning to say, they want to give equal protection to foreigners, the classification made is unreasonable, does not have intelligible differentia and there is no presence of nexus between the object of the Act and the basis of classification.
- The legislation has arbitrarily and unreasonably enacted para 83, the Government of India introducing para 83 of EPF Scheme and para 43A of EP Scheme is violative of Article 14 and the classification made is unreasonable and would defeat the very intent of the Act. The legislation cannot run beyond the parameters of the Parent Act and always there must be some principles to guide the exercise of discretion and for the foregoing reasons, the point framed for consideration is answered accordingly, and this Court pass the following:

## ORDER

(1) Writ Petitions are **allowed**.

(2) The introduction of para 83 of Employees' Provident Fund Scheme and para 43A of Employees' Pension Scheme are hereby struck down as unconstitutional and



arbitrary and consequently, all the orders passed thereof are unenforceable.”

3. The members who would like to go through the full judgment may download the judgment by clicking the following link.

Link: <https://online.publuu.com/496909/1115077>

**For KARNATAKA EMPLOYERS' ASSOCIATION**  
**Sd/**  
**[B C Prabhakar]**  
**President**