

EY Alert

Delhi High Court Ruling on International Worker Provisions under the Provident Fund law

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Executive summary

This Alert summarizes a Delhi High Court ruling dated 4 November 2025¹, wherein the issue regarding the validity of International Worker provisions under the Provident Fund law was analyzed.

Petitions were filed before the Delhi High Court challenging the validity of special provisions for 'International Workers' introduced under the Employees' Provident Fund Scheme, 1952 (EPF Scheme). The key issue was whether requiring foreign employees to contribute to Provident Fund (PF) without a salary threshold, while Indian employees earning above ₹15,000/month are exempt, constitutes discrimination under Article 14 of the Constitution. Additionally, the petitioners also argued that the withdrawal rules for International Workers, which only allow access to PF upon retirement at 58 years or in case of permanent incapacity, are arbitrary given their short employment duration in India.

In its analysis, the Court upheld the validity of the EPFO notifications, stating that the classification of International Workers is reasonable and justified based on the economic realities of their employment. The Court emphasized that Indian employees face greater economic pressures due to long-term contributions, while foreign employees' short-term stays warrant differential treatment.

The ruling also referred to previous judgments on the said issue and specifically disagreed with the Karnataka High Court's ruling² which struck down Paragraph 83 of the EPF Scheme, noting that it did not address the economic realities and rationale for classification. Thus, the Court has reinforced the distinction between Indian and foreign workers as valid, while dismissing the challenges to the special provisions for International Workers and the demand notices issued by the EPFO.

¹ W.P.(C) 2941/2012 & W.P.(C) 6330/2021

² W.P. No.18486/2012 and others



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Background

► Petitions Filed:

Spice Jet Ltd. and LG Electronics India challenged the EPFO notifications dated 1 October 2008 and 3 September 2010, which inserted and substituted Paragraph 83 in the Employees' Provident Fund Scheme, 1952, making special provisions for 'International Workers'.

► Key Issues Raised:

- Whether requiring foreign employees (International Workers) to contribute to the Provident Fund (PF) irrespective of salary, while Indian employees are exempt above ₹15,000/month, is discriminatory and violates Article 14 of the Constitution.
- Whether the withdrawal rules for International Workers (only on retirement at 58 years or permanent incapacity) are arbitrary, given they are typically on short employment duration in India.

Key provisions of Para 83

- **Definition of International Worker:** Covers - (a) Foreign passport holders (except Nepalese and Bhutanese nationals) working in India for an employer covered under the EPF Act; and (b) Indian employees working in a country with whom India has signed a Social Security Agreement (SSA) and eligible to avail benefits under the social security program of such country, by virtue of eligibility gained under the SSA.
- **Excluded Employees:** Foreign employees from countries having SSAs with India, enjoying detached worker status, or covered under certain bilateral agreements.
- **Mandatory PF Membership:** All International Workers (except excluded employees) must be covered under the PF from the date of joining, regardless of salary.
- **Withdrawal Rules:** International Workers can withdraw PF only on retirement at 58 years or on permanent incapacity, with some exceptions for those covered under SSA.

Petitioners' arguments

- **Discrimination:** Indian employees earning above ₹15,000/month are exempt from mandatory PF contributions, but foreign employees are not, creating an unreasonable classification.
- **Violation of Article 14:** The distinction is not based on any intelligible differentia; Protection under Article 14 of the Constitution applies to all persons, including foreigners.

► **Arbitrary Withdrawal Rules:** Foreign employees typically work in India for short periods (2-5 years), but can only withdraw PF at 58 years, which is unreasonable.

► **Ultra Vires:** The notifications allegedly exceed the powers delegated by the EPF Act, which does not distinguish between Indian and foreign employees.

Respondents' arguments (EPFO and Union of India)

- **Reasonable Classification:** Foreign employees typically have short-term employment in India and do not face the same economic duress as Indian employees, who contribute throughout their careers.
- **Social Security Objective:** The scheme aims to provide social security, and the classification is based on duration of employment and economic impact.
- **International Obligations:** Paragraph 83 of the EPF Scheme implements India's international treaty obligations (SSA), and differential treatment is justified.

Court's analysis and findings

- **Test of Permissible Classification:** The Court applied the Supreme Court's test—classification must be based on intelligible differentia and have a rational nexus to the objective.
- **Economic Duress Rationale:** The Court agreed that Indian employees face economic duress due to long-term contributions, while foreign employees' short-term stay justifies the lack of salary threshold.
- **No Violation of Article 14:** The classification is reasonable and not arbitrary; Article 14 of the Constitution allows reasonable classification.
- **Withdrawal Rules:** The rules for International Workers are linked to India's international treaty obligations and are not arbitrary.

Precedents considered

- **Karnataka High Court (single bench ruling on 25 April 2024):** The Delhi High Court expressly disagreed with the Karnataka High Court's ruling striking down Paragraph 83, noting that it did not address the economic realities and rationale for classification.
- **Bombay High Court (two-member bench ruling on 7 Aug 2019):** The Delhi High Court relied on the Bombay High Court's judgment upholding Paragraph 83, emphasizing that International Workers are a distinct class and differential treatment is justified.

- **Supreme Court:** The Court followed the Supreme Court's principles on permissible classification under Article 14 of the Constitution, finding the scheme's provisions valid.

Final Ruling

- **Notifications Upheld:** The Court upheld the validity of the notifications dated 1 October 2008 and 3 September 2010, as well as subsequent amendments and related circulars.
- **Demand Notices & Summons:** The challenge to EPFO's demand notices and summons also failed, as they were based on valid notifications.
- **Direction to EPFO:** Proceedings under Section 7A (determination of dues) to be conducted afresh, strictly following statutory requirements.

Comments

The Delhi High Court's ruling reinforces the obligations of employers regarding the treatment of International Workers and their coverage and contributions under the EPF Scheme.

The Delhi High Court highlighted its disagreement with the recent Karnataka High Court ruling dated 25 April 2024, which struck down the special provisions for International Workers. This would mean that:

- All International Workers, except those specifically excluded (e.g., detached workers from countries with SSA), must contribute to the EPF from the date of joining, regardless of their salary levels.
- PF contributions for International Workers will have to be deposited on full 'monthly pay', irrespective of the salary ceiling under the EPF Scheme.
- International Workers would be able to withdraw their PF only upon retirement at 58 years OR in case of permanent incapacity, except where covered under SSA.

In light of the above ruling, employers may conduct a thorough evaluation of their current practices pertaining to PF contributions and compliances for foreign employees, to ensure alignment with the special provisions for International Workers under the EPF Scheme and mitigate any potential risks for the organization.

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