

**STANDING COMMITTEE ON LABOUR**

**(2017-18)**

**(SIXTEENTH LOK SABHA)**

**MINISTRY OF LABOUR AND EMPLOYMENT**

**[Action taken by the Government on the Observations/  
Recommendations of the Committee contained in their  
Twenty-Sixth Report (Sixteenth Lok Sabha) on 'Exempted  
Organisations/Trusts/Establishments from EPFO: Performance,  
Issues and Challenges']**

**THIRTY-SEVENTH REPORT**



**LOK SABHA SECRETARIAT**

**NEW DELHI**

**July, 2018/ Shravana, 1940 (Saka)**

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## **COMPOSITION OF THE STANDING COMMITTEE ON LABOUR**

**(2017-18)**

**DR. KIRIT SOMAIYA - CHAIRPERSON**

### **MEMBERS**

#### **Lok Sabha**

2. Shri Udayanraje Pratapsingh Bhonsle
3. Shri Rajesh Kumar Diwakar
4. Shri Ashok Kumar Dohrey
5. Shri Satish Chandra Dubey
6. Shri Devajibhai Govindbhai Fatepara
7. Shri Satish Kumar Gautam
8. Dr. Boora Narsaiah Goud
9. Shri Rama Chandra Hansdah
10. Shri C. N. Jayadevan
11. Shri Bahadur Singh Koli
12. Dr. Arun Kumar
13. Shri Kaushalendra Kumar
14. Shri Hari Manjhi
15. Shri R. Parthipan
16. Shri Dayakar Pasunoori
17. Shri Hariom Singh Rathore
18. Shri Naba Kumar Sarania (Hira)
19. Shri Kodikunnil Suresh
20. Shri Mulayam Singh Yadav
21. Vacant

#### **Rajya Sabha**

22. Shri Ram Narain Dudi
23. Shri N. Gokulkrishnan
24. Shri Nazir Ahmed Laway
25. Shri P.L. Punia
26. Shri Rajaram
27. Shri Amar Shankar Sable
28. Ms. Dola Sen
29. Dr. Banda Prakash
30. Shri Akhilesh Prasad Singh
31. Shri Madanlal Saini

### **SECRETARIAT**

- |                               |   |                     |
|-------------------------------|---|---------------------|
| 1. Ms. Rimjhim Prasad         | - | Joint Secretary     |
| 2. Smt. Anita B. Panda        | - | Director            |
| 3. Shri C. Vanlalruata        | - | Additional Director |
| 4. Shri Devudu Babu Badireddi | - | Executive Assistant |

## **INTRODUCTION**

I, the Chairperson, Standing Committee on Labour (2016-17) having been authorized by the Committee do present on their behalf this Thirty-Seventh Report on 'Action taken by the Government on the Observations/ Recommendations of the Committee contained in their Twenty-Sixth Report (Sixteenth Lok Sabha) on Exempted Organisations/Trusts/Establishments from EPFO: Performance, Issues and Challenges' pertaining to the Ministry of Labour & Employment.

2. The Twenty-Sixth Report was presented to Lok Sabha and laid in Rajya Sabha on 7<sup>th</sup> April, 2017. The Ministry of Labour and Employment furnished their replies indicating Action Taken on the Observations/ Recommendations contained in the Twenty-Sixth Report on 12<sup>th</sup> February, 2018. The Committee considered and adopted the Draft Report at their sitting held on 4<sup>th</sup> July, 2018.

3. An analysis of the action taken by the Government on the Observations/ Recommendations contained in the Twenty-sixth Report of the Standing Committee on Labour (Sixteenth Lok Sabha) is given at Appendix-II.

4. For ease of reference, Observations/ Recommendations of the Committee have been printed in thick type in the body of the Report.

**New Delhi;**  
**19<sup>th</sup> July, 2018**  
**28<sup>th</sup> Ashadha, 1940 (Saka)**

**(DR. KIRIT SOMAIYA)**  
**CHAIRPERSON,**  
**STANDING COMMITTEE ON LABOUR**

## **REPORT**

### **CHAPTER-I**

This Report deals with action taken by the Government on the Observations/Recommendations of the Committee contained in their Twenty-sixth Report (Sixteenth Lok Sabha) on "Exempted Organisations/Trusts/ Establishments from EPFO: Performance, Issues and Challenges".

2 The Twenty-sixth Report was presented to Lok Sabha and also laid in Rajya Sabha on 7<sup>th</sup> April, 2018. It contained 20 Observations/ Recommendations. Replies of the Government in respect of all these Recommendations have been received and are categorized as under:-

- |       |  |  |
|-------|--|--|
| (i)   | Observations/Recommendations which have been accepted by the Government –<br><b>Rec. Para Nos. 2.9, 2.25, 2.26, 2.39, 2.40, 2.41, 2.43, 2.58, 2.64, 2.69, 2.73</b>                       | <b>Total:11</b><br><b>Percentage: 55</b> |
| (ii)  | Observations/Recommendations which the Committee do not desire to pursue in view of the Government's reply – <b>Nil</b>  | <b>Total:00</b><br><b>Percentage:00</b>  |
| (iii) | Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration –<br><b>Rec. Para No. 2.23 and 2.24</b> | <b>Total:02</b><br><b>Percentage:10</b>  |
| (iv)  | Observations/Recommendations in respect of which replies of the Government are interim in nature-<br><b>Rec. Para No. 2.6, 2.7, 2.8, 2.22, 2.59, 2.60 and 2.66</b>                       | <b>Total:07</b><br><b>Percentage:35</b>  |

3. **The Committee desire that Action Taken Notes in respect of Observations/Recommendations contained in Chapter I and final action taken reply in respect of the Recommendation contained in Chapter V of this Report, for which interim reply has been given by the Government, may be furnished to them at the earliest.**

**I. Amendment in the EPF&MP Act to bring in better Compliance & Monitoring**

**(Recommendation Para No. 2.6)**

4. In their original recommendation, the Committee had observed as under:

"The Committee are of the view that the Exempted Establishment are to be monitored by EPFO, for which there is a strong need to review the present system of monitoring. The Committee pursued this during their interaction with the representatives of the Ministry and EPFO. As a result, significant changes have since been initiated as follows:

- (i) development of a new better software through C-DAC for more effective monitoring;
- (ii) initiation of compliance audit of Exempted Establishment;
- (iii) In view of non-capturing of data about un-claimed PF amount of members with Trusts of PF Exempted Establishment, initiation of formulation of guidelines for Trusts to transfer un-claimed amounts of EPFO;
- (v) Framing of new rates of surcharge for levying on account of deviation from the prescribed pattern of investment of BoTs of PF Exempted Establishment; and
- (vi) In-principle agreement to frame necessary guidelines/ amendments/notification to restrict BoTs of Exempted Establishment from investing in the instruments issued by the principal establishments and its sister concerns.

The Committee further note that after their deliberations with the Ministry of Labour and Employment and EPFO, on 14th December, 2016 and 18th January, 2017, directions were issued promptly to all the Regional Provident Fund Offices for collection of data and inspections were conducted too. The Committee, while taking note of the efforts made by the EPFO, desire that a definite timeline be given to all the Regional Offices for conducting compliance audit of the Exempted Establishment. C-DAC, Pune, the company developing a software to contain data of all exempted returns, should also be asked for completing the task which will form the basis to monitor compliance of the provisions of the Act. The Committee also impress upon the EPFO to speed up the formulation of policy guidelines for grant of exemption based on past performance, net worth, collections, contributions, minimum corpus and membership which is statedly under submission to the Central Board of Trustees. The Committee further recommend that once such guidelines are finalised by the EPFO, a complete review of all presently Exempted Establishments should be undertaken and completed within three months, followed by appropriate decision to close defective/unhealthy/deviating exempted PF Trusts and transfer the same to EPFO."

5. In their Action Taken Note furnished to the Committee, the Ministry of Labour and Employment have stated as follows:

"As per the direction of the Committee, EPFO vide circular No. Exem/10(20)/2016/Standing Committee/7963 dated 26.07.2017 (copy enclosed as Annexure – 'A') had directed all the field offices to ensure Compliance Audit of all the exempted establishments before 31.08.2017. The office-wise list of exempted establishments, alongwith the details of compliance audit has been annexed as Annexure – 'B'.

The requisite software regarding submission of online returns has already been delivered by C-DAC and is operational from 27.05.2017.

In compliance to the direction of the Committee the formulation of policy guidelines for grant of exemption based on past performance, net worth, collections, contributions, minimum corpus and membership was expeditiously completed by EPFO. The guidelines in nutshell framed in this regard are as follows –

The establishment should comply as an un-exempted establishment for a minimum period of five years.

The employment strength for such establishment should be more than five hundred.

The corpus size should be more than one hundred crores of Rupees at the time the establishment is seeking grant of exemption.

For laying down of the above guidelines, a amendment in the EPF Scheme, 1952 is under consideration.

However, the proposal was returned by Legislative Department, Ministry of Law and Justice. Ministry of Law and Justice has proposed that if the said guidelines are to be framed, then they should be incorporated in the EPF & MP Act, 1952 itself and not in the EPF Scheme, 1952. Amendment to the Scheme can be done through notification by the Government of India. However, amendment to the Act can only be carried out by the Parliament. Necessary amendments in various sections under EPF & MP Act, 1952 are under consideration."

**6. The Committee appreciate the fact that the Ministry are in agreement with their recommendations for formulation of policy guidelines for grant of exemption based on past performance, net worth, collections, contributions, minimum corpus and membership and have initiated action for amending the guideline for the grant of exemption to Organisations/ Establishments. However, the proposal was return by the Ministry of Law and Justice, with the rider that if the guidelines have to be framed, they**



should be incorporated in the Act itself by not in the scheme. However, the Committee are concern to note that the Ministry has not initiated any action on the recommendations of the Ministry of Law and Justice till date. The Committee, being of the considered opinion that the present lacunae in the EPF Act can only be overcome by amending the Act or rules by the Parliament, exhort upon the Ministry to initiate ground work for the same immediately so that the necessary amendments in the EPF Act/ Rules can be placed before the Parliament in the ensuing Monsoon Session, 2018. They would also like to be apprised of the progress achieved herein.

In a nutshell, the Committee observe that due to lack of guidelines or any provisions in the Act, the procedure to grant exemption resulted into non-transparent exemptions. The guidelines and basic terms and conditions to exempt the Provident Fund could be accommodated provided in the rules and regulations. The Committee hence reiterate the need for specific guidelines and opine that it is for the Government to decide as to whether it should be provided in the Rules or Act.

## **II. Unclaimed Amount**

### **(Recommendation Para No. 2.23)**

7. In their next original recommendation, the Committee had observed as under:

"The Committee opine that the huge amount of ₹5475 crore lying unclaimed with the Exempted Establishment particularly in two zones i.e. Haryana & Rajasthan and Maharashtra & Chhattisgarh, is a matter of concern. As of now there is no provision in the Act and Scheme which can restrict a PF Trust to hold unclaimed deposit with them. The Committee feel that transparency is required in the matter. After their intervention, a proposal is stated to be under process for amendment in the Scheme in order to enable EPFO to receive the unclaimed deposits lying with the PF Trusts. The Committee desire that without losing

further time, suitable amendment in the Scheme must be carried out so that in the Annual Account Statement of the PF Fund, name of workers, for whom unclaimed amount is available, not only gets reflected, but after specified period, gets transferred to EPFO. They also desire that possibilities of depositing the unclaimed amount so received in the Special Reserve Fund (SRF) may also be explored."

8. In their Action Taken Note furnished to the Committee, the Ministry of Labour and Employment have stated as follows:

"Finance Act, 2015 (No. 20 of 2015) dated 14.05.2015 and Senior Citizens' Welfare Fund Rules 2016, Section 122(2) of the Finance Act, 2015 (No. 20 of 2015) read with Finance Act, 2016 (No. 28 of 2016) stipulate that notwithstanding anything contrary contained in any other law for the time being in force, any credit balance in any of the accounts under EPF & MP Act, 1952 remaining unclaimed for a period of seven years from the date of its declaration as an inoperative account shall be transferred by the respective institution holding them to the fund.

In view of the above, it has become the statutory responsibility of various institutions defined in the rules to transfer the unclaimed amount which remains inoperative for 7 years, to the Senior Citizens' Welfare Fund. Rule No 3(c) of the Senior Citizens' Welfare Fund Rules 2016 clearly lays transfer of unclaimed amounts from the accounts of Employees' Provident Fund. Hence, Trusts of establishments exempted under Section 17 of the EPF & MP Act, 1952 also comes under the ambit of the Senior Citizens' Welfare Fund Rules 2016 and are required to transfer the requisite amount as required by the Senior Citizens' Welfare Fund Rules 2016 to the Senior Citizens' Welfare Fund. In compliance to the provisions of Senior Citizens' Welfare Fund Rules, PF Trust of exempted establishments vide EPFO, Head Office circular No. Exem/32(18)/2016/Exemption/14780 dated 13.10.2017 (copy enclosed as Annexure – 'D') have been directed to comply with provisions of the said rules."

### **(Recommendation Para No. 2.24)**

9. In their next original recommendation, the Committee had observed as under:

"Till the subject was taken up for examination by the Committee, the EPFO did not have any details of unclaimed amount lying with the Exempted Establishment. The Committee appreciate that, based on their suggestion, the EPFO has now started developing a mechanism for capturing the data related to unclaimed deposits lying with the exempted establishment. They, therefore, recommend that the mechanism must be put in place at the earliest. They also desire that a time period should also be specified for keeping the unclaimed amount with the respective establishment, after which the amount be deposited with the EPFO."

10. In their Action Taken Note furnished to the Committee, the Ministry of Labour and Employment have stated as follows:

"As stated in reply to para No. 2.23, Trusts of exempted establishments are required to transfer the unclaimed P.F. amounts of the members to the Senior Citizens' Welfare Fund. Vide EPFO, Head Office letter No. Exem/32(18)/2016/Exemption/14780 dated 13.10.2017 (copy enclosed as Annexure – 'D') all the exempted establishments have been directed to keep accounts and full employee wise details of each member whose amount is transferred to Senior Citizens' Welfare Fund including P.F. Account No., Pension Account Number, name and father's/spouse's- name of the employee, amount transferred, date of birth, date of joining, last known address of employee along with Bank Account Number, Aadhar Card Number, Nominee details, list of family members etc. (wherever available). It has been further directed that the audited balance sheet of Trust should also reflect the total year wise amount transferred to Senior Citizens' Welfare Fund and Fund lying unclaimed with Government for less than 25 years in Senior Citizens' Welfare Fund as contra entry in assets and liabilities both.

Where no request or claim as specified in section 124 of Finance Act 2015 is made within a period of 25 years from the date of credit of the unclaimed amount to the Fund, it shall escheat to the Central Government unless a court otherwise orders. In such an eventuality aforesaid contra entry in assets and liability side of Balance Sheet will get reduced to the extent of amount escheated the Central Government.

Similarly, in case of settlement of unclaimed amount already transferred to Senior Citizen Welfare Fund, aforesaid contra entry equivalent to the principal amount transferred for such member will get reversed.

As per the Senior Citizens' Welfare Fund Rules 2016, the Trusts of exempted establishments can keep the P.F. accumulations lying in an account, which has become inoperative, for seven years and after that the amount shall be required to be transferred to the Senior Citizens' Welfare Fund."

**11. The Committee appreciate that the Government has taken note of the observations made by them in their original report on the subject about the unclaimed/non-operative balance/accounts. As per their reply the Government has informed the committee that new provisions have been made to transfer such amount to Senior Citizen Welfare Fund. The Committee would like to reiterate that details/calculation/the system of treating and accounting of unclaimed/non-operative accounts may also be**

**explained in detail by the Ministry in their Action Taken Statement. The Committee would also like to know how and when such amount will be transferred to Senior Citizen Welfare Fund and how it will be utilized. The Committee feel that more clarity is needed in the whole procedure.**

### **III. Illegal Utilisation of Unclaimed Amount**

#### **(Recommendation Para No. 2.25)**

12. In their original recommendation, the Committee had observed as under:

"The Committee note that, as of now, there are no clear cut guidelines for Exempted Establishment to keep the unclaimed deposits hence during compliance audit, the PF Inspectors rely on the audited balance sheets of the Exempted Establishment and their Trusts to see that no such amount is utilized in their working capital. The Committee find from the documents furnished by the EPFO that in the past, there were hardly any compliance audits conducted by the EPFO. In fact the audit mechanism gained momentum after intervention of the Committee. Hence the Committee feel that some of the Exempted Establishment could be using the unclaimed deposits as their working capital. They therefore, desire that such possibilities should be considered while framing the guidelines and stringent penalty may be prescribed in order to deter the Exempted Establishment from carrying out such illegal activities."

13. In their Action Taken Note furnished to the Committee, the Ministry of Labour and Employment have stated as follows:

"Strict legal provisions are already present in the Act and Scheme, which act as deterrence for the establishments not to utilize the unclaimed amounts of the members as the working capital and no such incident has been reported from field offices. Some of the provisions are mentioned as under :-

Condition No. 6 of Appendix – 'A' to Para 27AA of the EPF Scheme, 1952 - The employer shall bear all the expenses of the administration of the Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

Condition No. 28 of Appendix – 'A' to Para 27AA of the EPF Scheme, 1952 - In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

The above two conditions make the employer liable to recoup the losses occurred in the Trust Fund.

Further, if the employer refuses to make good the losses occurred in the Trust Fund, then determination of money dues from the employer can be done by conducting a quasi-judicial inquiry under Section 7A of EPF & MP Act, 1952. The amount assessed thereby includes the amount due from the employer, penal damages under Section 14B of EPF & MP Act, 1952 and interest under Section 7Q of EPF & MP Act, 1952.

Further a criminal case can also be filed against the employer under IPC 405 / 409 for Criminal Breach of Trust.

*The provision for Criminal Breach of Trust is mentioned in Chapter XVII under section 405 of Indian Penal Code. Section 405, of Indian Penal Code states, 'Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of Trust.'*

**14. The Committee note that inspite of the provisions to penalise any act of criminal breach of trust in the EPF&MP Act, there was no monitoring of those exempted establishments which may be using the funds dishonestly as despite the Committee being convinced of such cases, the Ministry has claimed that no such cases have been reported. The Committee are of the apprehension that even till date, the Ministry of Labour & Employment and EPFO are not in possession of any data of such establishments as their PF inspectors fall back upon the exempted establishment's audited balance sheet only. The Committee, therefore, desire that taking cue from the extant provisions of the Act, the Ministry must put in place a deterrent mechanism well in time to keep tab on such errant establishments along with appropriate use of the provision for imposing stringent penalty on them, which would act as a deterrent for the future. The Committee would also like to be apprised of the progress achieved herein.**

#### **IV. Software for on-line return filing**

### **Recommendation (Para 2.73)**

15. In their original recommendation, the Committee had observed as under:

"The Committee note that presently the PF Trusts of Exempted Establishment manage Trust funds in accordance with the laid down provisions by maintaining individual ledger Accounts. The Committee further note that in line with the e-governance policy of the Government, Electronic-Challan-cum-Return (ECR) has been introduced by EPFO for filing of returns by employer of Exempted Establishment and Trusts. A Dashboard for monitoring of filing of online returns by Exempted Establishment and their trust has also been developed for benefit of field offices. In view of the rampant violations of the Act, the Committee opine that mere filing of returns has not proved to be enough to protect the workers of the Exempted Establishment hence there still remains scope for improvement in the checking of the returns filed by Exempted Establishment. They therefore recommend that the returns filed by the Exempted Establishment be checked randomly to detect misuse of the facility and appropriate action be taken against the defaulting establishments. Meanwhile, the Committee desire to be apprised of the status of the new software being developed for EPFO by C-DAC, Pune, and the improvements brought therein to detect short comings in returns and other violations more effectively."

16. In their Action Taken Note furnished to the Committee, the Ministry of Labour and Employment have stated as follows:

"Basic software for filing of online returns was delivered by C-DAC on 27.05.2017. During the compliance audit of the exempted establishments, cross verification of the online returns is done as a standard practice. In case any discrepancy is noticed between the returns filed by the establishment and records produced by the establishment at the time of inspection, then the inspecting squad mentions the same in the compliance audit report and recommends for appropriate legal action against the establishment as per the EPF & MP Act, 1952."

**17. The Committee note that based on their recommendation, Ministry of Labour & Employment has got a basic software for filing of online returns developed by C-DAC on 27.05.2017. The Committee would like to know about the features of the software and its impact on detecting shortcomings in returns and other violations more effectively. The Committee would also like to be apprised of the progress achieved herein.**

**CHAPTER-II**  
**OBSERVATIONS/RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY**  
**THE GOVERNMENT**

**(Recommendation No. 2.9)**

The Committee further find that there are 118 Exempted Establishment having their total corpus of less than one crore. The last return filed by these establishments dated back to the years 2014 and 2015. Hence, the Committee feel that these establishments may not have taken any steps to benefit their PF subscribers. The Committee, note that the Ministry have now initiated identification of small/very small PF trusts and framing of policy guidelines for imposing restrictions of minimum corpus and membership. They reiterate that strong guidelines for grant of exemption may be made which make it mandatory to take into account past performance, net worth, group performance as well as minimum strength of workers, collections, contributions and corpus of the company/establishment.

**Reply of the Government**

For dealing with the exempted establishments of small size, guidelines have already been framed taking into account the past performance, corpus size of the Trust and minimum strength of workers. Necessary amendments in various sections under EPF & MP Act, 1952 are under consideration.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

**(Recommendation No. 2.25)**

The Committee note that, as of now, there are no clear cut guidelines for Exempted Establishment to keep the unclaimed deposits hence during compliance audit, the PF Inspectors rely on the audited balance sheets of the Exempted Establishment and their Trusts to see that no such amount is utilized in their working capital. The Committee find from the documents furnished by the EPFO that in the past, there were hardly any compliance audits conducted by the EPFO. In fact the audit mechanism gained momentum after intervention of the Committee. Hence the Committee feel that some of the Exempted Establishment could be using the unclaimed deposits as their working capital. They therefore, desire that such possibilities should be considered while framing the guidelines and stringent penalty may be prescribed in order to deter the Exempted Establishment from carrying out such illegal activities.

## **Reply of the Government**

Strict legal provisions are already present in the Act and Scheme, which act as deterrence for the establishments not to utilize the unclaimed amounts of the members as the working capital and no such incident has been reported from field offices. Some of the provisions are mentioned as under :-

Condition No. 6 of Appendix – ‘A’ to Para 27AA of the EPF Scheme, 1952 - The employer shall bear all the expenses of the administration of the Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

Condition No. 28 of Appendix – ‘A’ to Para 27AA of the EPF Scheme, 1952 - In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

The above two conditions make the employer liable to recoup the losses occurred in the Trust Fund.

Further, if the employer refuses to make good the losses occurred in the Trust Fund, then determination of money dues from the employer can be done by conducting a quasi-judicial inquiry under Section 7A of EPF & MP Act, 1952. The amount assessed thereby includes the amount due from the employer, penal damages under Section 14B of EPF & MP Act, 1952 and interest under Section 7Q of EPF & MP Act, 1952.

Further a criminal case can also be filed against the employer under IPC 405 / 409 for Criminal Breach of Trust.

*The provision for Criminal Breach of Trust is mentioned in Chapter XVII under section 405 of Indian Penal Code. Section 405, of Indian Penal Code states, ‘Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract , express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of Trust.*

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**



### **(Recommendation No. 2.26)**

The Committee note that migration, illiteracy, un-awareness and the intention to enjoy benefits of Income Tax are the probable reasons for non-claiming of PF dues by workers. The Committee feel that since the exempted organizations are expected to have all the details of each worker/employee, like name, address, nominees etc., while employing them and thus can disburse PF dues to an employee or his/her heir. They therefore, desire that the EPFO must impress upon those Exempted Establishment to make all efforts to trace the workers/ employees/ nominees and disburse the amount in the first instance and thereafter, if some amount still remains, the same could be transferred to EPFO.

### **Reply of the Government**

Necessary instructions have been issued to the exempted establishments vide EPFO, Head Office circular No. Exem/32(18)/2016/Exemption/14780 dated 13.10.2017 (copy enclosed as Annexure – ‘D’) to make all efforts to trace the workers /employees’ nominees and disburse the amount to members / his her heirs. Further Rule No. 7 of the Senior Citizens’ Welfare Fund Rules 2016 prescribes for the publication of unclaimed amounts lying in the members’ accounts as under:

Publication of Information.-

- (1) Each institution shall, before crediting the unclaimed amount to the Fund, publish the information relating to accounts in which unclaimed deposits are lying, in the manner provided under this rule.
- (2) The Institution shall identify the unclaimed amounts and prepare a list of the accounts containing details of the unclaimed amount by the 30th day of September of each financial year.
- (3) The Institution shall try to contact each of the account holder of the unclaimed amount, by all reasonable means of communication, including written notice, e-mail and telephone, on at least two occasions, within a span of a period of sixty days.
- (4) The Institution shall display the list prepared under sub-rule (2) for the general information of the public, on the notice boards of the relevant offices and on the website of the Institution concerned for at least a period of sixty days, inviting claims, if any.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

### **(Recommendation No. 2.39)**

The Committee note that the Board of Trustees (BOTs) of Exempted Establishment are required to invest the Trust Funds in accordance with pattern of investment notified by the Government. They further note that in case of any deviation from the prescribed pattern of investment, the BOTs are liable to pay surcharge which is limited to three times and after that, the exemption is liable to be cancelled by giving reasonable opportunity to the employer. The surcharge levied by EPFO is statedly very nominal and is meant just to deter the establishments from any deviation. The Committee have now been informed that the EPFO has framed and notified new rates of surcharge on 1st February, 2017. However, the Committee apprehend that even the revised rate of surcharge may not act as an effective deterrent. They therefore, desire that the effectiveness of the new rates of surcharge monitored closely revisited subsequently, if needed.

### **Reply of the Government**

As per the direction of the Committee, EPFO has revisited the rates and has infact increased the rates. The new rate of surcharge had been circulated vide EPFO, Head Office Circular No. Exem/10(16)2016/28265 dated 01.02.2017 (copy enclosed as Annexure – ‘E’).

Since, the increase in the rates have been done in 2017 therefore the effect of the same will be monitored for the two financial years i.e. 2017-18 and 2018-19 and the effectiveness of increase in the surcharge further will be revisited subsequently.

The surcharge as provisioned under condition No. 17 of Appendix – ‘A’ to Para 27AA of EPF Scheme, 1952 is levied on the Board of Trustees for not investing the money as per the pattern notified by the Government. However, if any loss is occurred to the Trust or the Trust is unable to give the rate of interest at par with the rate of interest declared by EPFO due to wrong investment decision/non-compliance of the pattern of investment/otherwise, then following conditions also act as safeguard so that the workers’ P.F. accumulations do not get jeopardised –

Condition No. 28 of Appendix – ‘A’ to Para 27AA of the EPF Scheme, 1952 - In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

Condition No. 7 of Appendix – ‘A’ to Para 27AA of the EPF Scheme, 1952 - Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up the statutory limit.

Surcharge is only the penalty imposed on the Board of Trustees for not following the pattern of investment, whether it has caused any loss to the Trust Fund or not. Making good the loss or the deficiency in the interest rate has to be done by the employer.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

**(Recommendation No. 2.40)**

The Committee note that surcharge is levied on the BOTs of the Exempted Establishment which are deviating from the prescribed pattern of investment three times and after that if those are found to be indulging in same kind of deviation, the exemption is liable to be cancelled. From the list of 317 such establishments, on whose BoTs, surcharge was levied, the Committee observe that most of the establishments were closed against which the cancellation orders were issued. The Committee therefore, desire that such a futile exercise needs to be tackled with regular physical inspection of the establishments by the Regional inspectors and if required, cancellation process be speeded up. The Committee further recommend that while formulating the guidelines, a provision may be made for review of exemption after a prescribed period, so that the EPFO is aware of the exact financial status of the establishment and precautionary measures are taken well in time and interests of the workers/employees are protected.

**Reply of the Government**

As desired by the Committee, to tackle the problem of early identification of violations such as deviation from the pattern of investment, EPFO has directed all the field offices to complete the compliance audit, which includes physical inspection of the establishment by the Inspector every year. Copy of the EPFO, Head Office circular No. Exem/10(20)/2016/Standing Committee/7963 dated 26.07.2017 is enclosed as Annexure – 'A'.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

**(Recommendation No. 2.41)**

From the deposition of EPFO the Committee note that the extant provisions of the Act and Scheme do not impose any restriction on Exempted Establishment for investment of accumulated PF funds in their own company/business/sister concerns via mutual funds route. However, as per submission of EPFO, in-principle agreement has been reached to frame necessary guidelines which restrict the Trust from investing in their own ventures through this route. The

Committee feel that investing in own business is improper and is being done to serve their own interests. They, therefore, desire that there is a need to have special inspection/audit of all such companies and the EPFO should take early action on the requisite process, for restricting investment through this route and take immediate corrective steps/redivert such investments in other healthy investment instruments.

### **Reply of the Government**

As per the direction of the Committee, instructions to all the field offices regarding adhering to arm's length principle of investment and physical verification of securities has been given, so that establishments may be restricted from investing in their own company/business/sister concerns and same may be detected at the earliest and immediate corrective steps may be taken by EPFO, so that the P.F. accumulations of the workers do not get jeopardised. The related circulars are enclosed as Annexures – 'G' and 'H'.

Further, the new pattern of investment prescribed by the Government also takes care of the concerns of the Committee. Para 8 of the pattern of investment notified on 29.05.2015 (copy enclosed as Annexure – 'I') stipulates the following :-

*The investment of funds should be at arm's length, keeping solely the benefit of the beneficiaries in mind. For instance, investment (aggregated across such companies/organizations described herein) beyond 5% of the fresh accretions in a financial year will not be made in the securities of a company/organization or in the securities of a company/organization in which such a company/organization holds over 10% of the securities issued, by a fund created for the benefit of the employees of the first company/organization, and the total volume of such investments will not exceed 5% of the total portfolio of the fund at any time. The prescribed process of due diligence must be strictly followed in such cases and the securities in question must be permissible investments under these guidelines.*

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

### **(Recommendation No. 2.43)**

The Committee note that as per the amendment made in Para 27AA of EPF Scheme, 1952, the Exempted Establishment have to maintain securities in the DEMAT format instead of physical form of securities. The Committee were informed that since a certificate of holding is obtained from the participant depository, hence there is no need of physical inspection of securities. The Committee find that some of the Exempted Establishment could be investing

either in excess of the limit permitted under the guidelines in private securities or the parent company or its sister concerns, in which case they can provide a certificate of holding which in no way, can certify that the investments have been made in the Government prescribed securities only. Also the Committee are apprehensive about some of the private investments turning into bad debts in some cases of Exempted Establishment, for instance, District Cooperative Banks, etc. The Committee, therefore, recommend that it should be made mandatory to check the DEMAT account to verify the pattern of investments made as well as the returns thereof received by the Exempted Establishment during the compliance audit.

### **Reply of the Government**

The securities holding are always verified by the inspecting squad during the compliance audit. Whether the Trust of the exempted establishment is following pattern of investment or not is reported in the compliance audit report. However, in compliance to the directions of the Committee, necessary directions vide EPFO, Head Office circular No. Exem/10(20)/2016/Vol. III/4044 dated 13.06.2017 has been issued to verify the certificate issued by Depository Participant holding the securities in DEMAT form (copy enclosed as Annexure – 'H').

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

### **(Recommendation No. 2.58)**

The Committee note that presently the Exempted Establishment and their Trusts are required to file returns online periodically which can be viewed by the field offices through a Dashboard developed for the purpose. However, this has not proved as an effective tool for monitoring of Exempted Establishment and their PF Trusts. It is evident from the EPFO's own submission before the Committee, to this effect. On the suggestion of the Committee, C-DAC Pune was assigned the task of developing necessary software in July, 2016, for which the stipulated delivery date was 31st December, 2016. However, the scheduled delivery was reportedly delayed and was expected by the end of March 2017. The Committee desire to be apprised of the status and if not delivered, recommend that necessary instructions to C-DAC Pune may be issued for immediate delivery of the requisite software with complete features. As the data would be required to be migrated to the new software, the Committee urge the Ministry to take up the matter and pursue it vigorously.

### **Reply of the Government**

The software has been delivered by C-DAC and has been made operational w.e.f. 27.05.2017.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

#### **(Recommendation No. 2.64)**

The Committee note that there are various types of major violations/malpractices of the exemption provisions being done by the Exempted Establishment, viz. (i) not adhering to the prescribed pattern of investment; (ii) delay in transfer of PF contributions to Trusts within stipulated date; (iii) non-declaration of interest or the declared rate of interest lower than the EPF rate; and (iv) investing PF funds in own company. The Committee were informed that whenever such violations are observed, there is a prosecution provision and even the exemption could be cancelled. However, the details of action taken against the defaulting establishment on these counts are being gathered from the field offices by EPFO after the matter was raised by the Committee. As the basic principle of granting exemption to some establishments is to ensure similar or even better social security to workers, the Committee are of the strong opinion that if any establishment is committing violations, stern penal action must be taken by the regulating authority. The Committee therefore, recommend that irregularities/violations be viewed very seriously by the EPFO and they must ensure that appropriate prosecution action, as enumerated in the Act, be taken against the defaulting establishment without fail. At some time, the Committee feel that RPFs & EPFO have a statutory duty to keep a constant vigil on the violations committed, if any, and failure to do so should attract appropriate administrative action against them too.

### **Reply of the Government**

As per the direction of the Committee, necessary instructions to all the field offices has been given vide EPFO, Head Office circular No. Exem/10(20)/2016/Vol. III/10735 dated 29.09.2017 (copy enclosed herewith as Annexure – 'F') for taking stern penal actions against the defaulting establishments as per the EPF & MP Act, 1952.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

### **(Recommendation No. 2.69)**

The Committee note that there were cases of cancellation/revocation of exemption of Exempted Establishment like Jute Mills, State Electricity Boards, etc in terms of Section 17(4) of the EPF & MP Act, 1952. However, there is no subsequent provision to compensate the subscribers and the liability towards subscribers is shifted from Private PF Trust to EPFO to the extent of fund transferred from the BoT. The Committee are note that apart from lack of clarity on cancellation or revocation status in some establishment, there is no provision to prevent the innocent subscriber from being cheated on account of the irregularity committed by his/her employer and the resultant cancellation of the exemption. Moreover, since the industrial work force remains largely unaware of official procedures, hence in cases where the legal status of an exempted establishment changes due to 'revocation', there could be innumerable cases of non-payment of claims remaining unresolved owing to long legal delays. In such cases many a times an employee dies and since there is hardly any willingness on the part of employers to trace legal heirs, his dues lie unclaimed in the employer's account. The Committee, therefore, desire to be apprised of correct status of cancellation/revocation of Exempted Establishment in the last three years. Further, they recommend that in case of functioning establishments, where exemption is cancelled, heavy penalty needs to be imposed on the employers to recover the amount and in case of closure of defaulting establishment due to revocation, the subscribers needs to be compensated through the SRF. The Committee desire that the matter must be examined in detail and appropriate legal provisions be framed to protect and disburse the lifetime savings of employees/workers in these situations.

### **Reply of the Government**

As per condition No. 6, 7 and 28 of Appendix –‘A’ to Para 27AA of the EPF Scheme, 1952 regarding loss to the Provident Fund, any deficiency in the interest rate declared by the Board of Trustees and any loss to the Trust respectively has to be made good by the employer. The said conditions have been reproduced as under :-

Condition No. 6 of Appendix – ‘A’ to Para 27AA of the EPF Scheme, 1952 - The employer shall bear all the expenses of the administration of the Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

Condition No. 7 of Appendix – ‘A’ to Para 27AA of the EPF Scheme, 1952 - Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up the statutory limit.

Condition No. 28 of Appendix – ‘A’ to Para 27AA of the EPF Scheme, 1952 - In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

Therefore, even in case of cancellation/revocation of exemption, assessment of financial liability is carried out and any loss in the Provident Fund has to be made good by the employer before the past accumulations are taken into CBT, EPF account and SRF for exempted establishment does not exist.

The status of the cancellation /revocation of Exempted Establishment in the last three years is enclosed as Annexure – ‘J’.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

**(Recommendation No. 2.73)**

The Committee note that presently the PF Trusts of Exempted Establishment manage Trust funds in accordance with the laid down provisions by maintaining individual ledger Accounts. The Committee further note that in line with the e-governance policy of the Government, Electronic-Challan-cum-Return (ECR) has been introduced by EPFO for filing of returns by employer of Exempted Establishment and Trusts. A Dashboard for monitoring of filing of online returns by Exempted Establishment and their trust has also been developed for benefit of field offices. In view of the rampant violations of the Act, the Committee opine that mere filing of returns has not proved to be enough to protect the workers of the Exempted Establishment hence there still remains scope for improvement in the checking of the returns filed by Exempted Establishment. They therefore recommend that the returns filed by the Exempted Establishment be checked randomly to detect misuse of the facility and appropriate action be taken against the defaulting establishments. Meanwhile, the Committee desire to be apprised of the status of the new software being developed for EPFO by C-DAC, Pune, and the improvements brought therein to detect short comings in returns and other violations more effectively.

**Reply of the Government**

Basic software for filing of online returns was delivered by C-DAC on 27.05.2017. During the compliance audit of the exempted establishments, cross verification of the online returns is done as a standard practice. In case any discrepancy is noticed between the returns filed by the establishment and records produced by the establishment at the time of inspection, then the inspecting squad mentions the same in the compliance audit report and recommends for appropriate legal action against the establishment as per the EPF & MP Act, 1952.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**



### **CHAPTER-III**

#### **OBSERVATIONS/ RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLY**

**NIL**

## **CHAPTER-IV**

### **OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION**

#### **(Recommendation No. 2.23)**

The Committee opine that the huge amount of ₹ 5475 crore lying un-claimed with the Exempted Establishment particularly in two zones i.e. Haryana & Rajasthan and Maharashtra & Chhattisgarh, is a matter of concern. As of now there is no provision in the Act and Scheme which can restrict a PF Trust to hold unclaimed deposit with them. The Committee feel that transparency is required in the matter. After their intervention, a proposal is stated to be under process for amendment in the Scheme in order to enable EPFO to receive the unclaimed deposits lying with the PF Trusts. The Committee desire that without losing further time, suitable amendment in the Scheme must be carried out so that in the Annual Account Statement of the PF Fund, name of workers, for whom unclaimed amount is available, not only gets reflected, but after specified period, gets transferred to EPFO. They also desire that possibilities of depositing the unclaimed amount so received in the Special Reserve Fund (SRF) may also be explored.

#### **Reply of the Government**

Finance Act, 2015 (No. 20 of 2015) dated 14.05.2015 and Senior Citizens' Welfare Fund Rules 2016, Section 122(2) of the Finance Act, 2015 (No. 20 of 2015) read with Finance Act, 2016 (No. 28 of 2016) stipulate that notwithstanding anything contrary contained in any other law for the time being in force, any credit balance in any of the accounts under EPF & MP Act, 1952 remaining unclaimed for a period of seven years from the date of its declaration as an inoperative account shall be transferred by the respective institution holding them to the fund.

In view of the above, it has become the statutory responsibility of various institutions defined in the rules to transfer the unclaimed amount which remains inoperative for 7 years, to the Senior Citizens' Welfare Fund. Rule No 3(c) of the Senior Citizens' Welfare Fund Rules 2016 clearly lays transfer of unclaimed amounts from the accounts of Employees' Provident Fund. Hence, Trusts of establishments exempted under Section 17 of the EPF & MP Act, 1952 also comes under the ambit of the Senior Citizens' Welfare Fund Rules 2016 and are required to transfer the requisite amount as required by the Senior Citizens' Welfare Fund Rules 2016 to the Senior Citizens' Welfare Fund. In compliance to the provisions of Senior Citizens' Welfare Fund Rules, PF

Trust of exempted establishments vide EPFO, Head Office circular No. Exem/32(18)/2016/Exemption/14780 dated 13.10.2017 (copy enclosed as Annexure – ‘D’) have been directed to comply with provisions of the said rules.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

**(Recommendation No. 2.24)**

Till the subject was taken up for examination by the Committee, the EPFO did not have any details of unclaimed amount lying with the Exempted Establishment. The Committee appreciate that, based on their suggestion, the EPFO has now started developing a mechanism for capturing the data related to unclaimed deposits lying with the exempted establishment. They, therefore, recommend that the mechanism must be put in place at the earliest. They also desire that a time period should also be specified for keeping the unclaimed amount with the respective establishment, after which the amount be deposited with the EPFO.

**Reply of the Government**

As stated in reply to para No. 2.23, Trusts of exempted establishments are required to transfer the unclaimed P.F. amounts of the members to the Senior Citizens’ Welfare Fund. Vide EPFO, Head Office letter No. Exem/32(18)/2016/Exemption/14780 dated 13.10.2017 (copy enclosed as Annexure – ‘D’) all the exempted establishments have been directed to keep accounts and full employee wise details of each member whose amount is transferred to Senior Citizens’ Welfare Fund including P.F. Account No., Pension Account Number, name and father’s/spouse’s- name of the employee, amount transferred, date of birth, date of joining, last known address of employee along with Bank Account Number, Aadhar Card Number, Nominee details, list of family members etc. (wherever available). It has been further directed that the audited balance sheet of Trust should also reflect the total year wise amount transferred to Senior Citizens’ Welfare Fund and Fund lying unclaimed with Government for less than 25 years in Senior Citizens’ Welfare Fund as contra entry in assets and liabilities both.

Where no request or claim as specified in section 124 of Finance Act 2015 is made within a period of 25 years from the date of credit of the unclaimed amount to the Fund, it shall escheat to the Central Government unless a court otherwise orders. In such an eventuality aforesaid contra entry in assets and liability side of Balance Sheet will get reduced to the extent of amount escheated the Central Government.

Similarly, in case of settlement of unclaimed amount already transferred to Senior Citizen Welfare Fund, aforesaid contra entry equivalent to the principal amount transferred for such member will get reversed.

As per the Senior Citizens' Welfare Fund Rules 2016, the Trusts of exempted establishments can keep the P.F. accumulations lying in an account, which has become inoperative, for seven years and after that the amount shall be required to be transferred to the Senior Citizens' Welfare Fund.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

## **CHAPTER-V**

### **OBSERVATION/RECOMMENDATION IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT ARE INTERIM IN NATURE**

#### **(Recommendation No. 2.6)**

The Committee are of the view that the Exempted Establishment are to be monitored by EPFO, for which there is a strong need to review the present system of monitoring. The Committee pursued this during their interaction with the representatives of the Ministry and EPFO. As a result, significant changes have since been initiated as follows:

- (i) development of a new better software through C-DAC for more effective monitoring;
- (ii) initiation of compliance audit of Exempted Establishment;
- (iii) In view of non-capturing of data about un-claimed PF amount of members with Trusts of PF Exempted Establishment, initiation of formulation of guidelines for Trusts to transfer un-claimed amounts of EPFO;
- (v) Framing of new rates of surcharge for levying on account of deviation from the prescribed pattern of investment of BoTs of PF Exempted Establishment; and
- (vi) In-principle agreement to frame necessary guidelines/ amendments/notification to restrict BoTs of Exempted Establishment from investing in the instruments issued by the principal establishments and its sister concerns.

The Committee further note that after their deliberations with the Ministry of Labour and Employment and EPFO, on 14th December, 2016 and 18th January, 2017, directions were issued promptly to all the Regional Provident Fund Offices for collection of data and inspections were conducted too. The Committee, while taking note of the efforts made by the EPFO, desire that a definite timeline be given to all the Regional Offices for conducting compliance audit of the Exempted Establishment. C-DAC, Pune, the company developing a software to contain data of all exempted returns, should also be asked for completing the task which will form the basis to monitor compliance of the provisions of the Act. The Committee also impress upon the EPFO to speed up the formulation of policy guidelines for grant of exemption based on past performance, net worth, collections, contributions, minimum corpus and membership which is statedly under submission to the Central Board of Trustees. The Committee further recommend that once such guidelines are

finalised by the EPFO, a complete review of all presently Exempted Establishments should be undertaken and completed within three months, followed by appropriate decision to close defective/unhealthy/deviating exempted PF Trusts and transfer the same to EPFO.

### **Reply of the Government**

As per the direction of the Committee, EPFO vide circular No. Exem/10(20)/2016/Standing Committee/7963 dated 26.07.2017 (copy enclosed as Annexure – ‘A’) had directed all the field offices to ensure Compliance Audit of all the exempted establishments before 31.08.2017. The office-wise list of exempted establishments, alongwith the details of compliance audit has been annexed as Annexure – ‘B’.

The requisite software regarding submission of online returns has already been delivered by C-DAC and is operational from 27.05.2017.

In compliance to the direction of the Committee the formulation of policy guidelines for grant of exemption based on past performance, net worth, collections, contributions, minimum corpus and membership was expeditiously completed by EPFO. The guidelines in nutshell framed in this regard are as follows –

The establishment should comply as an un-exempted establishment for a minimum period of five years.

The employment strength for such establishment should be more than five hundred.

The corpus size should be more than one hundred crores of Rupees at the time the establishment is seeking grant of exemption.

For laying down of the above guidelines, a amendment in the EPF Scheme, 1952 is under consideration.

However, the proposal was returned by Legislative Department, Ministry of Law and Justice. Ministry of Law and Justice has proposed that if the said guidelines are to be framed, then they should be incorporated in the EPF & MP Act, 1952 itself and not in the EPF Scheme, 1952. Amendment to the Scheme can be done through notification by the Government of India. However, amendment to the Act can only be carried out by the Parliament. Necessary amendments in various sections under EPF & MP Act, 1952 are under consideration.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

### **(Recommendation No. 2.7)**

The Committee note that as per the latest information provided by EPFO, there are 1549 Exempted Establishment all over India employing 84,42,241 workers. Further, the number of workers/employees covered under each of those establishments varies from 1 to 3,25,997. The Committee observe that some of the establishments are following dual set up i.e. some of their workers/employees were subscribing to their own trust while some were subscribing to EPF. While an individual employee or a class of employees can be exempted under Section 17(2) read with Para 27 and 27(A) respectively, the Committee apprehend that in such a scenario, there could be a possibility of workers/employees being left out of coverage of either of the setup in confusion. Besides, in view of the very limited capability of the Exemption Division of EPFO to minutely monitor compliance, it may not, perhaps, be possible to detect exclusion of employees, even if it exists. They, therefore, desire that in the policy guidelines being formulated, adequate care needs to be taken to ensure that either all the eligible workers/employee subscribe to their own Trust or to EPFO as a whole. They also recommend that the enabling clause for choosing the Trust or EPF by the respective subscriber may be withdrawn with immediate effect.

### **Reply of the Government**

Para 27 and 27A of EPF Scheme, 1952 enables the individual employee and the class of employees to seek exemption from the operation of the EPF Scheme, 1952. For ensuring all the eligible workers/employees to subscribe to their own Trust or to EPFO as a whole, Para 27 and 27A is required to be amended. Necessary amendments in various sections under EPF & MP Act, 1952 are under consideration.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

### **(Recommendation No. 2.8)**

The Committee find that there were 180 Exempted Establishment having membership strength of less than 20. Out of those 180 establishments, 22 establishments have been shown as having 0 memberships. They therefore, desire that exemption granted to these establishments be reviewed immediately and suitable action may be taken.

### **Reply of the Government**

The exemption granted to said establishments have been reviewed and the status is annexed as Annexure –‘C’. Necessary amendments in various sections under EPF & MP Act, 1952 are under consideration.

After carrying out necessary amendments in the said Act, all the exempted establishments will be reviewed based on the new eligibility criterion and further decision on cancellation of exemption of such establishments will be taken, which will not qualify the prescribed eligibility.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

### **(Recommendation No. 2.22)**

The Committee note that as on 31st December, 2016, the total corpus of Exempted Establishment is around ₹2.57 lakh crore including the unclaimed PF amount of ₹5475 crore. The Committee opine that the total corpus could have been more, had some of the establishments not violated the provisions of the Act. The Committee are happy that of late, the compliance audit is being conducted by the EPFO and proposal for cancellation of exemption has also been under consideration. They therefore, desire that the pending proposals for cancellation of exemption be finalized at the earliest so that the concerned workers/employees could be covered under EPF provisions.

### **Reply of the Government**

Cancellation of exemption of exempted establishments is an ongoing process and is done under Section 17(4) of the EPF & MP Act, 1952. For streamlining the process of cancellation of exemption, necessary amendments in various sections under EPF & MP Act, 1952 are under consideration.

Subsequent to the amendment, all the exempted establishments will be reviewed based on the new eligibility criterion and further decision on cancellation of such establishment will be taken, which will not qualify the prescribed eligibility.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

### **(Recommendation No. 2.59)**

As Third Party compliance audit of many Exempted Establishment was not conducted during the last several years, the Committee feel that several violations may have remained undetected. They further note that following



their intervention in the matter, the EPFO issued directions to all the field offices for ensuring up-to-date compliance audit of Exempted Establishment. However, no audits have been conducted in three zones i.e. Delhi and Uttarakhand, Punjab and HP and Maharashtra and Chhattisgarh. The Committee desire to be apprised of reasons thereof. The Committee opine that once the review exercise of grant of exemptions is completed, carrying out compliance audit would become manageable for the RPFs. The Committee therefore, recommend that the formulation of new guidelines for grant of exemption be prioritised followed by the review of the exemption granted so that the same could be cancelled for the defaulting Exempted Establishment. They also desire that the consolidated report of compliance special audit of the Establishments be furnished to them, as committed by the EPFO during the meeting held on 18th January, 2017.

### **Reply of the Government**

In compliance to the direction of the Committee the formulation of policy guidelines for grant of exemption based on past performance, net worth, collections, contributions, minimum corpus and membership was expeditiously completed by EPFO. The guidelines in nutshell framed in this regard are as follows –

- i. The establishment should comply as an un-exempted establishment for a minimum period of five years.
- ii. The employment strength for such establishment should be more than five hundred.
- iii. The corpus size should be more than one hundred crores of Rupees at the time the establishment is seeking grant of exemption.

For laying down of the above guidelines, amendment in the EPF Scheme, 1952 is under consideration.

However, the proposal was returned by Legislative Department, Ministry of Law and Justice. Ministry of Law and Justice has proposed that if the said guidelines are to be framed, then they should be incorporated in the EPF & MP Act, 1952 itself and not in the EPF Scheme, 1952. Amendment to the Scheme can be done through notification by the Government of India. However, amendment to the Act can only be carried out by the Parliament. Necessary amendments in various sections under EPF & MP Act, 1952 are under consideration. The office-wise status of the compliance audit of the exempted establishments is enclosed as Annexure – 'B'.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

**(Recommendation No. 2.60)**

The Committee note that presently the Regional Provident Fund Commissioners are monitoring the implementation of the Act through their 123 field offices spread across the Country. However it is surprising that at present there is no Central monitoring mechanism available for ensuring that the checking of compliance of the Act by the Exempted Establishment by the RPFCS is done appropriately. The Committee, therefore, opine that grant of exemption and its monitoring should be finalised Centrally through the Head Office, instead of leaving it solely to the RPFCS not only to keep a check on the malpractices/violations but also to maintain uniformity in grant of exemptions. They therefore, recommend that all future requests for exemptions, once examined by the field offices, should be referred to the EPFO Head Office for final decision and a Central monitoring mechanism must be put in place which may also include physical inspections alongwith constant vigil on the digital database.

**Reply of the Government**

Requests for exemption once examined by the field offices of EPFO are referred to the Head office of EPFO. Necessary amendments in various sections under EPF & MP Act, 1952 are under consideration. System of online monitoring of the exempted establishments has been started with the launch of newly developed software by C-DAC.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

**(Recommendation No. 2.66)**

The Committee note that proposals for grant of exemption are pending with EPFO for years together because the process could not be completed within the statutorily period under the Act. Resultantly, the EPFO had to seek permission for extension of time from the Ministry of Finance several times for seven years during the period 2007-13. Responding to the query of the Committee for the reasons thereof, EPFO stated that the proposal for grant of exemption is considered complete if the proposal meets all the guidelines. The Committee, note that, presently the power to grant exemption rests with more than 100 Regional Provident Fund Commissioners, even than there are numerous cases pending for grant of exemption. Clearly the RPFCS have not been able to ensure that the proposals are complete in all respects for final decision on the cases. Therefore, the Committee opine that the policy guidelines need to be revisited to ensure that the pending proposals are disposed off in a time bound manner. As the Ministry has statedly decided to frame necessary guidelines/amendments/notifications to address concerns expressed by the Committee with respect to exemptions, the Committee suggest that the pending proposals can be examined from the perspective of amended guidelines, so that the

number of establishments seeking exemption could become manageable. The Committee desire to be furnished with a detailed note on the final action taken by the Ministry to address all points raised in connection with the subject.

### **Reply of the Government**

Regarding the observation stated in the above para i.e. power to grant exemption rests with more than Regional P.F. Commissioner, it is submitted that Regional P.F. Commissioners examine the proposals and forward it to the Head Office for onwards submission to the Central Board of Trustees. On the recommendations of the Central Board of Trustees the proposals are forwarded to the appropriate Government for grant of exemption.

In compliance to the direction of the Committee, the formulation of policy guidelines for grant of exemption based on past performance, net worth, collections, contributions, minimum corpus and membership was expeditiously completed by EPFO. The guidelines in nutshell framed in this regard are as follows and pending proposals will be examined from perspective of amended guidelines –

- i. The establishment should comply as an un-exempted establishment for a minimum period of five years.
- ii. The employment strength for such establishment should be more than five hundred.
- iii. The corpus size should be more than one hundred crores of Rupees at the time the establishment is seeking grant of exemption.

For laying down of the above guidelines, a formal proposal for amendment is under consideration of the Ministry.

However, the proposal was returned by Legislative Department, Ministry of Law and Justice. Ministry of Law and Justice have proposed that if the said guidelines are to be framed, then they should be incorporated in the EPF & MP Act, 1952 itself and not in the EPF Scheme, 1952. Amendment to the Scheme can be done through notification by the Government of India. Necessary amendments in various sections under EPF & MP Act, 1952 are under consideration.

**(Ministry of Labour and Employment O. M. No. H-11025/1/2017 SS-II dt. 7.2.2018)**

**New Delhi;  
19<sup>th</sup> July, 2018  
28<sup>th</sup> Ashadha, 1940 (Saka)**

**DR. KIRIT SOMAIYA  
CHAIRPERSON,  
STANDING COMMITTEE ON LABOUR**

**STANDING COMMITTEE ON LABOUR**

**(2017-18)**

**Minutes of the Twenty-fourth Sitting of the Committee**

The Committee sat on Wednesday, the 4<sup>th</sup> July, 2018 from 1200 hrs. to 1250 hrs. in Committee Room No. 2, Parliament House Annexe - Extension Building, New Delhi.

**PRESENT**

**Dr. Kirit Somaiya, MP – Chairperson**

**MEMBERS**

**LOK SABHA**

2. Shri Rajesh Kumar Diwakar, MP
3. Shri Ashok Kumar dohrey, MP
4. Shri Satish Chandra Dubey, MP
5. Shri Devajibhai Govindbhai Fatepara, MP
6. Shri Satish Kumar Gautam, MP
7. Dr. Boora Narsaiah Goud, MP
8. Shri C.N. Jayadevan, MP
9. Shri Bahadur Singh Koli, MP
10. Shri Kaushalendra Kumar, MP
11. Shri Hariom Singh Rathore, MP
12. Shri Naba Kumar Sarania, MP

**RAJYA SABHA**

13. Shri Ram Narain Dudi, MP
14. Shri P.L. Punia, MP
15. Shri Rajaram, MP
16. Shri Amar Shankar Sable, MP
17. Shri N. Gokulakrishnan, MP
18. Ms. Dola Sen, MP
19. Dr. Banda Prakash, MP

**SECRETARIAT**

1. Ms. Rimjhim Prasad - Joint Secretary (RP)
2. Smt. Anita B. Panda - Director
3. Shri C. Vanlalruata - Additional Director

2. The Committee first took up following draft Reports for consideration:
  - i. Action taken by the Government on the Observations/ Recommendations of the Committee contained in their Twenty-Sixth Report (Sixteenth Lok Sabha) on 'Exempted Organisations/ Trusts/ Establishments from EPFO: Performance, Issues and Challenges';
  - ii. XX                      XX                      XX                      XX
  - iii. XX                      XX                      XX                      XX
3. After some deliberation, the Committee adopted both draft Action Taken Reports and authorized the Chairperson to finalise the Reports in the light of consequential changes that might arise out of factual verification of the Draft Reports and to present the same to both the Houses.
4. XX                      XX                      XX                      XX                      XX
5. XX                      XX                      XX                      XX                      XX

**The Committee then adjourned.**

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XX Does not pertain to this Report.

**(Vide Para No. 3 of the Introduction)****ANALYSIS OF ACTION TAKEN BY THE GOVERNMENT ON  
RECOMMENDATIONS CONTAINED IN THE TWENTY-SIXTH REPORT OF  
THE STANDING COMMITTEE ON LABOUR (SIXTEENTH LOK SABHA)**

	<b>Total</b>	<b>Percentage</b>
I. Total number of Recommendations	20	
II. Observations/Recommendations which have been accepted by Government (Recommendation Para. Nos. 2.9, 2.25, 2.26, 2.39, 2.40, 2.41, 2.43, 2.58, 2.64, 2.69 and 2.73)	11	55%
III. Observations/Recommendations which the Committee do not desire to pursue in view of Government's replies - Nil	00	00%
IV. Observations/Recommendations in respect of which Government's replies have not been accepted by the Committee and which requires reiteration – 2.23 and 2.24	02	10%
V. Observations/Recommendations in respect of which replies of Government are of interim in nature- Recommendation Para No. 2.6, 2.7, 2.8, 2.22, 2.59, 2.60 and 2.66	07	35%
		----- 100% -----