

EPFO to Challenge HC Ruling Against Inclusion of Foreign Workers Under Its Ambit

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New Delhi: The Employees' Provident Fund Organisation is likely to challenge a Karnataka High Court ruling which held the inclusion of international workers under its fold as unconstitutional, said a senior government official.

In a recent judgement, the high court termed the EPF scheme provisions covering 'international workers' unconstitutional if international workers earning several lakhs are required to contribute to provident fund on their full salary, whereas the contribution is capped at Rs 15,000 for Indians working overseas.

India has more than 150,000 expatriates, with a large number of them from countries, including the US and UK, with which India does not have a social security agreement.

Expats from these countries working in India are subject to provident fund deductions on their full salary.

"The EPFO is actively evaluating the course of action in response to this judgement," the retirement fund body said in a statement on Tuesday.

According to the official, in its appeal against the judgement, the EPFO is likely to point out the special provisions for international workers, cine workers and those working in newspaper establishments. "Besides, classification of employees based on salary drawn has been upheld in standards of test of classification in the earlier verdicts," the official said.

India has social security agreements with 21 countries under which the employees continue to make provident fund contributions in their home country through their certificate of coverage or under totalisation agreement.

Experts, however, said the judgement has brought relief to expatriates in the country. "This is a welcome judgment of the Karnataka HC and would assist in reducing burdensome PF compliance for international workers (expats)," Amit Agarwal, partner, Nangia & Co said. According to Agarwal, the cash flow impact of the judgment on expats or foreign companies is very significant, as the EPF was earlier calculated and deposited on the entire salary of foreign workers.



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Feedback

Karnataka HC ruling on PF for expats: Companies can revisit compliance strategy, PF payments for such workers, say experts

The provisions were introduced by the Central government in provisions through a notification dated October 1, 2008 through which it was made mandatory for international workers to contribute to the Provident Fund.



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While welcoming the judgment, experts said that the matter may be appealed in the Supreme Court but said companies can review their compliance strategies.

'This is a single judge ruling and typically matters like this are referred to the larger bench of the High Court and / or the matter may travel to the Supreme Court of India. Until then, employers may analyse the impact of the ruling and devise their compliance strategy accordingly also considering the fact that similar writs are pending before other High Courts of the country,' said Puneet Gupta, Tax Partner, EY India.

Amit Agarwal, Partner, Nangia & Co LLP noted that the judgment would assist in reducing burdensome PF compliance for international workers (Expats). "The cash flow impact of the judgment on foreign expats and companies is very significant, as the EPF was earlier calculated and deposited on entire salary of foreign expats which sums ran into lakhs," he said, adding that the refund of such amounts was another challenge which the expats had to face on their return to home country.

The Karnataka HC judgment upholds the principle of Equality as enshrined under Article 14 of the constitution, to the effect that Foreign Expats cannot be asked to pay EPF on their full salary when for Indian employees the limit is Rs 15,000 per month, he said.

In its ruling, the Karnataka High Court Karnataka struck down the special provisions for International Workers as unconstitutional and arbitrary. The EPF and Miscellaneous Provisions Act, 1952 was enacted to ensure that employees with lower salary brackets get retirement benefits. It cannot be held that employees who draw a higher salary should be given benefit under the law.