

**EMPLOYEES' PROVIDENT FUND ORGANISATION**  
**Bhavishya Nidhi Bhavan, 341, Bandra [E] Mumbai - 400 051.**

No.MH/ PF/EXM/28124/ 625A

Date : 23/03/2015

**ORDER OF THE REGIONAL PROVIDENT FUND COMMISSIONER [I]**  
**U/S 7-A OF THE EMPLOYEES' PROVIDENT FUND AND MISC.**  
**PROVISIONS ACT 1952 IN CASE OF M/S.INDIAN INSTITUTE OF**  
**BANKING & FINANCE LTD ., MH/28124 WITH REFERENCE TO HIGH**  
**COURT, MUMBAI DIRECTIONS.**

**FACTS**

M/s. Indian Institute of Banking & Finance Ltd [hereinafter referred to as "THE ESTABLISHMENT" ] was covered under the scheduled head "Educational Institution" w.e.f. 1/2/1982 vide this office letter No. MH/BAN/28124/C.I/01-I/435 dated 07/02/03 as employed more than 19 employees. Hence, there is no dispute about on applicability of EPF & MP Act, 1952 [hereinafter referred as "ACT"]. The establishment was set up in 01/02/1982 and formed a Trust for its employees Provident Fund till coverage under the Act. Presently matter came for review of order u/s 7-A as per direction of High Court, Mumbai dated 27/08/2014.

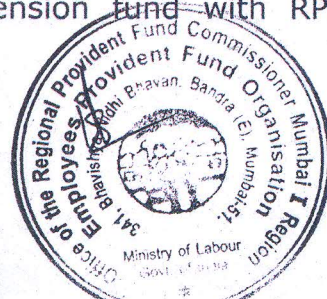
**LIS**

The dispute was raised for contributing @ 10% while applicable rate of contribution was 12%. Hence, a 7-A inquiry was initiated & an order was issued for claiming difference which was deposited by the establishment.

Further a few employees who were retired under voluntary Retirement Scheme [VRS] on various dates including last in June 2004 having a total number of 30 employees [one employee more but later withdrawn his claim] who complained in High Court against the 7-A order passed on 25/2/2010. The ground was to claim contribution on D.A., as the establishment was contributing only on Basic salary and was depositing the same to the TRUST fund of the establishment.

Claims of all the VRS employees were already settled on the basis of balances accumulated in their funds in TRUST.

The other ground of the complaint of VRS employees was to claim regular monthly pension though they had never been member of FPF/EPS till their VRS and neither the employer contributed to pension fund with RPFC.



Rather full amount was paid as withdrawal to members' alongwith interest on VRS.

### **CAUSE OF INQUIRY**

Being aggrieved from the 7-A order & non receipt of contribution on Dearness Allowance & monthly pension etc, the 30 VRS employees filed a writ petition No.1138 of 2014 in Mumbai High Court. The Mumbai High Court order dated 27/08/2014 stated as under :-

"The Writ Petition can be conveniently disposed of by directing the Provident Fund's Commissioner – Respondent Nos.1 and 2 to hold an inquiry under Section 7A, 7C, 7Q and 14B of the Provident Funds Act. The earlier order which was passed under Section 7A of the Provident Funds Act shall be reviewed. The Commissioner of Provident Funds shall give hearing to both the parties. All the contentions raised by both the parties are kept open. This exercise shall be completed within the six weeks. It is clarified that it is only restricted to the Petitioners only. With this direction, the writ petition is disposed of. "

CORAM ; V.M.KAN ADE &

P.D.KODE, JJ

Accordingly proceedings for review started on 23/9/2014 by summoning parties involved & continued through adjournments from time to time & finally for hearing on 11/02/2015 wherein it was reserved for orders.

### **ARGUMENTS SUBMITTED BY VRS EMPLOYEES/REPRESENTATIVES**

Mrs.Ankit Rele file authority to represent 30 VRS employees and explained in writing also that another one more employee who was originally a party to petition but later withdrawn & even not paid court fee. Mumbai High Court also restricted to review to petitioners only within the purview of the Act.

The main arguments filed by Smt.Rele are summarized as under which are on record in writing as well submitted during hearing in person.

1. She argued that as per Act, Dearness Allowance is to be included in Basic Wages for deduction of PF & other dues , which is not done by the establishment
2. She also claimed that all the employees have rendered eligible service for pension, hence monthly pension should be granted to all 30 employees subject to their eligibility under the Act.



3. She further argued that the establishment has to deposit first employee and employer share both & then deduct from the employees' wages so pension contribution should first be paid by employer then they can recover from the employees.
4. She also confirmed in her reply [first paragraph] filed on 11/02/2015 as "it is further submitted that after filing of statement, statement showing details of wages i.e. Basic wages and DA and Provident Fund deducted by the employer is received by these complainants".

### **ARGUMENTS BY THE EPF DEPARTMENT THROUGH EOS**

As per direction of the department the team of EOs verified the records with reference to Mumbai High Court direction & directions issued by 7-A authority reviewing this case, written replies are filed by EOs & explanations given during proceeding by appearing in person which are taken on record.

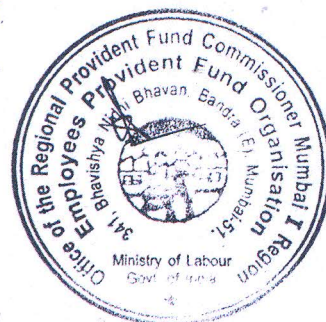
### **ARGUMENTS OF THE REPRESENTATIVES OF ESTABLISHMENT**

Sh.Jawahar Deshpande, Joint Director [Admn] and Sh.Vikas Jain, Deputy Director appeared on various proceedings whose authority to appear is directly filed on record. During proceedings written replied, counter replies & arguments were made by representatives of the establishment. They admitted that the establishment is a law abiding entity & prepared to pay any escaped amount if unintentionally left out with interest & penalties under the Law. However, the summary of their arguments is as under:-

[1] It was accepted that establishment deducted PF contributions only on Basic Wages till the notice of coverage received from the department. He explained that they were not falling under the scheduled head till 1982 while the entity was set up in 1928 u/s 25 of the Indian Companies Act, 1913.

However, inadvertently neither the employees nor the department & obviously nor the management could realize the applicability of the Act, till a notice of coverage dated 07/02/2003 issued by the Bandra Office of department was received on 14/2/2003. Being a law abiding establishment the applicability was accepted & assessment made by Bandra office u/s 7-A was complied with.

[2] As regards claim raised for pension on monthly basis by Mrs.Rele, it is submitted that establishment has deposited both the shares of contributions in TRUST [recognized by Income Tax Act] & which have been fully paid on VRS with due interest.



As regards argument of Mrs. Rele that employer is liable to deposit both shares in first instance & then recover from wages of the employees, have also been complied always as per true spirit & letters of the Law.

He strongly argued that if the employees claim for pension on monthly basis then they should refund the contributions on account of pension as per law for the relevant shares. He explained that the Act does not allow the double benefit to employees who have never contributed to pension fund but employer has given all their dues as per the Act.

[3] He admitted that the establishment has not deducted contributions on DA but strongly argued that full basic has been considered even if it exceeded the statutory limit as per Act [Rs.5000/- p.m. or Rs.6500/- from time to time]. Hence, he appealed that they should be allowed to restrict contributions on DA subject to statutory wage limit. Dues must be calculated only restricted to statutory wage limit.

He further appealed that wherever excess payment is made on Basic Wages beyond statutory limit that should be allowed to be recovered from employees as erroneous payment.

### **PROVISIONS OF LAW/ACT**

In the present case under review, the following provisions of Law/Act are relevant-

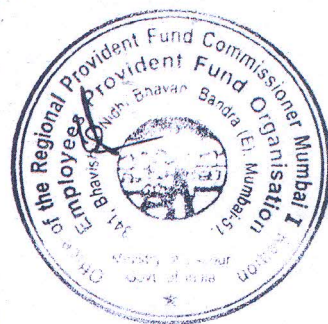
[i] Section 1[3][b] :- Applicability of Act which speaks as under :-

" to any other establishment employing [twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf "

Provided that the Central Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification].

[ii] Definition

Section 2[b] : "basic wages" means all emoluments which are earned by an employee while on duty or [on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include -



- [i] the cash value of any food concession
- [ii] any dearness allowance [that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living], house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- [iii] any presents made by the employer;

[iii] Section 6 : contributions and matters which may be provided for in Schemes : -

The contribution which shall be paid by the employer to the Fund shall be [ten percent] of the basic wages, [dearness allowance and retaining allowance [if any] for the time being payable to each of the employees [whether employed by him directly or by or through a contractor] and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may [if any employee so desires, be an amount exceeding [ten percent] of his basic wages, dearness allowance and retaining allowance [if any] subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section].

[provided that in its application to any establishment or class of establishments which the Central Government after making such inquiry as it deems fit, may by notification in the Official Gazette specify this section shall be subject to the modification that for the words [ten percent] at both the places where they occur, the words ["12 percent"] shall be substituted]

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off of such fraction to the nearest rupee, half of a rupee, or quarter of a rupee.

[Explanation I] – for the purpose of this [section] dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

[Explanation II] – for the purpose of this [section] "retaining allowance" means allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services].



[iv] Para 2 [f] of the EPF Scheme :

" Excluded Employee means -

[i] an employee who, having been a member of the fund, withdrew the full amount of his accumulations in the Fund under clause [a] or [c] of subparagraph [1] of paragraph 69

[ii] an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds [six thousand and five hundred rupees] per month

Explanation - "Pay" includes basic wages with [dearness allowance, retaining allowance [if any] and cash value of food concession admissible thereon "

Hence, all the above provisions are referred and considered with reference to arguments made by petitioners, EOs and the representatives of the employers while concluding & drafting the orders. Also relevant case laws have been considered in reference books] High court case etc for contributions & eligibility to benefits under the Act.

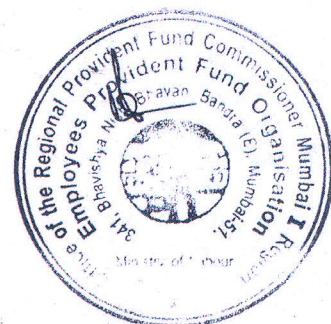
## **CONCLUSION**

Now after going through the arguments, explanations, reports etc submitted by various parties to this case & which are kept on record and keeping in view the various relevant provisions of Law/Act it is concluded that : -

[1] Establishment is liable to contribute upto statutory wage limit in respect of all employees including VRS employees w.e.f. applicability of the Act [1982] on Basic + DA. But as per the Mumbai High Court the order shall be restricted to petitioners only.

[2] The argument of employer is valid & upheld that VRS employees are bound to refund the excess amount paid to them on account of pension fund if they wish to claim monthly pension. No double benefit is provided under the Act & the establishment has rightly deposited the both shares in TRUST & paid to the VRS employees on exit by way of settlement of their claims

[3] The appeal made by representatives of the establishment for recovery of excess amount paid to employees beyond statutory limit in the past cannot be acceded to being unlawful.



[4] Since the Mumbai High Court has ordered to review the 7-A order only, hence the matter pertaining to grant of exemption is not dealt in this inquiry. Also it is transpired during the proceedings that establishment has filed the documents with application u/s17 to grant exemption by the department, which is under process of consideration. The department may take separate decision on the matter of exemption.

### REVIEW ORDER

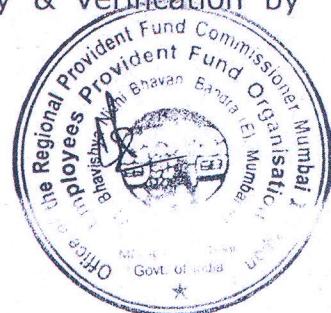
Now, after going through the Mumbai High Court directions dated 27<sup>th</sup> August 2014 and keeping in view the arguments, explanations, reports & submission made during the proceedings & after application of my mind, I, K.L.Goyal, Regional PF Commissioner [I] Mumbai - I Bandra as empowered u/s 7A, 7-B, 7-C of the EPF & MP Act, 1952 & as per direction of the Mumbai High Court hereby **ORDER** [with reference to 7-A order passed on 25/02/2010] as under:-

[I] As per records verified by team of EOs [copies of which are provided to complainant/establishment also] & deposited during the proceedings & calculations made for dues, hereby assess the following dues are payable by the establishment and employees in respect of 30 petitioners for the period/account wise mentioned in the table below:-

### EMPLOYERS & WORKERS

Period	Salary [Basic +DA]	I	II	EEs[X] [*]	ERs[X] [*]	XXI	XXII	Total
01/02/1982 to 30/06/2004	25643996	450162	32400	120735	1372544	128331	4340	<b>2108512</b>
Less : Already paid as [*]								<b>1493279</b>
<b>Balance to be paid</b>								<b>615233</b>

[II] The employees/petitioners are at liberty to deposit their due contributions on account of pension fund if they want to claim regular monthly pension under EPS-1995 subject to eligibility & verification by



competent authority for correctness of dues with proof of deposit with the TRUST/RPFC.

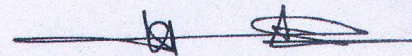
Accordingly the establishment is directed to deposit above said dues of Rs,6,15,233/- [Rupees Six lakhs fifteen thousand two hundred thirty three only] account wise as per table above within 15 days of the receipt of this order.

After deposit separate proceeding u/s 7-Q and 14-B for interest & damages may be conducted by the department by providing reasonable opportunity to the establishment.

This review order is issued without prejudice to any other actions to be taken under any other provisions of the Law/Act.

Issued under my seal & signature on this 23<sup>rd</sup> March 2015.

Copies may be served to the establishment & all concerned section. File may be consigned to records.



**[K.L.Goyal]**

Regional PF Commissioner [I]  
Regional Office, Bandra, Mumbai - I.

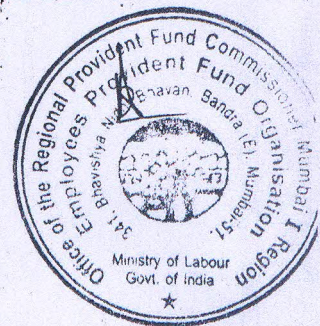
Place : Mumbai

Date : 23/03/2015

To

M/s.Indian Institute of Banking and Finance Ltd  
2<sup>nd</sup> floor, Kohinoor City, Commercial Tower - 1  
Kiorl Road, Kurla [West]  
Mumbai - 400 070

Smt.Ankita Rele & Others  
1/11 Kshatriya Niwas, 2<sup>nd</sup> floor  
Raja Ram Mohan Roy Road, Girgaum, Opp Lakhani Book Depot  
Mumbai - 400 004.....



Copy to : All concerned sections, Cash Section, Damages Section etc .