

Delhi HC upholds IW regime under EPF Scheme and Pension Scheme

We write to you to provide an update on a significant development to the International Worker (**IW**) regime under provident fund and pension laws, in light of a recent judgment passed by a Division Bench of the High Court of Delhi (**Del HC**) in the case of Spice Jet Ltd. and Ors. v. Union of India and Ors. (W.P. 2941/2012 and others), on November 4, 2025 (**Spice Jet Case**).

On April 25, 2024, the High Court of Karnataka (**Kar HC**) in Stone Hill Education Foundation and Ors. v. Union of India (W.P. 18486/2012 and others) (**Stone Hill Case**) struck down the notifications issued by the Government of India, introducing the IW regime under provident fund and pension laws, as unconstitutional (refer [here](#)). However, in the Spice Jet Case, the Del HC has subsequently upheld the constitutional validity of these notifications.

A copy of the judgement in the Spice Jet Case can be accessed [here](#). We have set out below some key aspects of the judgement.

Primary grounds of challenge

In the Spice Jet Case, the petitioners challenged the constitutional validity of notifications issued by the Ministry of Labour and Employment, dated October 1, 2008 and September 3, 2010 (**Notifications**), introducing the IW regime under Paragraph 83 of the Employees' Provident Fund Scheme, 1952 (**EPF Scheme**) and Paragraph 43A of the Employees' Pension Scheme, 1995 (**Pension Scheme**). The primary grounds of challenge were:

- a. the Notifications requiring IWs to become members of the Employees Provident Fund (**Fund**) are discriminatory as an Indian employee is required to contribute to the Fund only if they draw wages up to INR 15,000 per month whereas IWs are required to contribute irrespective of their salary;
- b. Section 2(f) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (**EPF Act**) does not distinguish between Indian and foreign employees, however such distinction was made under the Notifications, consequently creating a distinct class of employees who were required to contribute to the Fund even where they earn more than INR 15,000 per month – such classification does not have any rational basis, is not based on *intelligible differentia* and is therefore, hit by Article 14 of the Constitution of India;
- c. even non-citizens are entitled to equality before the law under Article 14 of the Constitution, which equality is being denied by the introduction of Paragraph 83 of the EPF Scheme – such distinction based on nationality is impermissible;
- d. Paragraph 69 of the EPF Scheme, as applicable to IWs, allows an IW to withdraw their PF accumulations only upon attaining the age of 58 years even though they work in an Indian establishment typically only for 2-5 years, which is arbitrary; and



e. a delegated legislation (i.e., the EPF Scheme), cannot travel beyond the scope of the powers delegated under the primary legislation (i.e., the EPF Act), and the creation of the distinction between domestic workers and IWs under the EPF Scheme is a colourable exercise of powers and *ultra vires* of the EPF Act, since the differentiation sought to be made is without any reasonable basis.

Decision and rationale of the Del HC

The Del HC went on to frame the following two issues for its consideration:

1. Whether the distinction made under Paragraph 83 of the EPF Scheme between foreign employees working in an Indian establishment (who are mandated to contribute to the Fund irrespective of their salary) and domestic employees (who are mandated to contribute to the extent they draw monthly salary up to INR 15,000), is made without any reasonable basis and hence classification is impermissible for being in violation of Article 14 of the Constitution?
2. Whether Paragraph 69 of the EPF Scheme (under Paragraph 83) is arbitrary and unreasonable as it permits withdrawal of the PF accumulations of foreign employees only on retirement after 58 years of age even though such employees come to India for shorter durations of 2-5 years?

Noting that the impugned Notifications do not suffer from any legal infirmity that warrants striking down of the provisions, the Del HC accordingly upheld the validity of the Notifications and subsequent notifications and circulars issued by the Government departments. Broadly, the Del HC's reasoning for upholding these Notifications can be explained as follows:

- a. Article 14 of the Constitution encompasses the right to equality before the law, both for Indian citizens and non-citizens, and codifies that where two sets of persons are similarly situated, they must be treated equally. However, the principle of equality does not mean that every law must have universal application for all persons who are not in the same position by nature, attainment or circumstances, and such equality is subject to 'reasonable classification'.

b. To pass the test of reasonable classification, the classification must be based on *intelligible differentia* and the *differentia* must have a rational relation to the object sought to be achieved.

c. Accepting the arguments put forth by the respondents, the Del HC observed that the classification under the Notifications is based on the fact that foreign employees do not face economic duress if they are made to become members of the Fund regardless of their salary, for the reason that they come to India for employment for shorter periods of 2-5 years, whereas Indian employees contribute to the Fund generally till the age of retirement and therefore such long duration of employment causes economic duress in case they are mandated to contribute to the Fund (in the same manner). On this basis, Del HC found the distinction to be reasonable and justified.

d. The Del HC concluded that the classification resulting in the introduction of the IW regime under Paragraph 83 satisfies the test of permissible/ reasonable classification and hence, is not in violation of Article 14 of the Constitution, even in its application to foreign nationals, since the classification is based on intelligible differentia. The Del HC further held that, for the same reasons, Paragraph 69 (under Paragraph 83) did not suffer from any illegality.

e. The Del HC further observed that Paragraph 83 in the EPF Scheme was introduced to implement India's international treaty obligations pursuant to its sovereign prerogative, and therefore if such provision is struck down, that will amount to taking away the legal basis for entering into and applying social security agreements that India has entered into with certain countries.

Significantly, it may be noted that the Del HC took note of the Kar HC judgment in the Stone Hill Case, however, the Court respectfully disagreed with the reasoning and conclusion of the Kar HC's Single Bench decision in the Stone Hill Case as it did not consider the reasonable classification based on economic duress. It therefore observed that the judgement of the Kar HC in the Stone Hill Case cannot be treated as a precedent to be followed by the Del HC.

Dichotomy in HC decisions

While High Court decisions generally have binding value on courts and tribunals within their respective jurisdiction, various judicial precedents of different High Courts and the Supreme Court, have held that the declaration of unconstitutionality of a Central legislation by a High Court, in exercise of its writ jurisdiction under Article 226 of the Constitution, has the effect of rendering the law unconstitutional for the rest of the country as well.

We now have a unique situation where, following the decision of a Single Judge Bench of the Kar HC striking down the IW regime as unconstitutional, a Division Bench of the Del HC has subsequently upheld the validity of the same. There is also an earlier decision of the Division Bench of the Bombay High Court in *Sachin Vijay Desai vs. Union of India & Ors.* (W.P. 1846/2018), which rejected a challenge to the constitutionality of Paragraph 83 of the EPF Scheme, and the Del HC in the Spice Jet Case has placed reliance on this judgment in its reasoning.

The Stone Hill Case is currently under appeal before the Kar HC, and no stay of the Single Bench order has been granted, till date. Any appeals against the Del HC's judgement in the Spice Jet Case, which can be preferred before the Supreme Court of India, will also need to be closely monitored.

At this juncture, the position of law around the IW regime in Delhi and Karnataka, although contradictory, appears to be clear within the respective territorial jurisdictions of the Del HC and Kar HC. However, employers in other States will be constrained to navigate the current uncertainties until a uniform nationwide position is established, and will need to cautiously determine their strategies going forward, including on continuing routine compliances with the IW-related provisions, positions in any ongoing proceedings in relation to IWs and their contributions etc.

We are tracking the judicial progress of this issue and will share an update in case of any appeals or other developments.

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