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[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION-3, SUB-SECTION (i)]

Government of India
Ministry of Labour and Employment

New Delhi, dated the 1st October, 2008

NOTIFICATION

G.S.R....(E).- In exercise of the powers conferred by section 5, read with sub-section (1) of section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees' Provident Funds Scheme, 1952, namely: -

(1) (1) This Scheme may be called the Employees' Provident Funds (Third Amendment) Scheme, 2008.

(2) It shall come into force on the date of its publication in the Official Gazette.

(2) In the Employees' Provident Funds Scheme, 1952, after paragraph 82, the following paragraph shall be inserted, namely: -

"83. Special provision in respect of International Workers.-The Scheme shall, in its application to International Workers as defined in clause (ff) of paragraph 2 of this scheme be subject to the following modifications, namely: —

(1) For clause (*f*) of paragraph 2, the following clauses shall be substituted, namely: —

(f) "excluded employee" means an International Worker, who is contributing to a social security programme of his/her country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on reciprocity basis and enjoying the status of detached worker for the period and terms, as specified in such an agreement ;

(ff) "International Worker" means:-

(a) an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to gain, under the said agreement ;

(b) an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the Act applies ;

(2) For the paragraphs 26, 26 A and 26 B, the following paragraphs shall be substituted, namely: —

26. Class of employees of International Workers entitled and required to join the fund.- (1)(*a*) Every International Worker of an establishment to whom this Scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the beginning of the month following that in which this paragraph comes into force.

(*b*) Every International Worker employed to do any work, in or in relation to any establishment to which this Scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the beginning of the month following that in which this paragraph comes into force, if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of that establishment in India.

(2) Where the Scheme applies to an establishment on the expiry or cancellation of an order of exemption under section 17 of the Act, every International Worker who, but for the exemption would have become and continued as a member of the Fund shall become a member of the Fund forthwith.

(3) After this paragraph comes into force in an establishment, every International Worker thereof, other than an excluded employee, who has not become a member already shall also be entitled and required to become a member from the beginning of the month.

(4) An excluded employee of an establishment to which this Scheme applies shall, on ceasing to be such an employee be entitled and required to become a member of the Fund from the beginning of the month following that on which he ceases to be such employee.

(5) On re-election of a class of International Workers exempted under paragraph 27A to join the fund or on the expiry or cancellation of an order under that paragraph, every International Worker, who but for such exemption would have become and continued as a member of the Fund, shall forthwith become a member thereof.

(6) Every International Worker who is a member of a private provident fund maintained in respect of an exempted establishment and who, but for the exemption, would have become and continued as a member of the Fund shall, on joining an establishment to which this Scheme applies, become a member of the Fund forthwith.

26A. Retention of membership.- A member of the Fund shall continue to be a member until he withdraws under paragraph 69 the amount standing to his credit in the Fund or is covered by a notification of exemption under section 17 of the Act or an order of exemption under paragraph 27 or 27A or the benefits are settled in terms of the relevant provisions under the social security agreement entered into between India and his country of origin.

Explanation. —In the case of a claim for refund by a member under sub-paragraph (2) of paragraph 69, the membership of the Fund shall be deemed to have been terminated from the date the payment is authorised to him by the authority specified in this behalf by the Commissioner irrespective of the date of claim.

26B. Resolution of doubts.- If any question arises as to whether an International Worker is entitled or required to become or continue as member, or as to the date from which he is entitled or required to become a member, the decision thereon of the Regional Commissioner shall be final:

Provided that no decision shall be given unless both the employer and the International Worker have been given an opportunity of being heard.

(2) For paragraph 36, the following paragraphs shall be substituted, namely:-

36. Duties of employers.- (1) Every employer shall send to the Commissioner, within fifteen days of the commencement of this Scheme, a consolidated return in such form as the Commissioner may specify, of the International Workers (indicating distinctly the nationality of each and every International Worker) required or entitled to become members of the Fund showing the basic wage, retaining allowance (if any) and dearness

allowance including the cash value of any food concession paid to each of such International Worker:

Provided that if there is no International Worker who is required or entitled to become a member of the Fund, the employer shall send a 'NIL' return.

(2) Every employer shall send to the Commissioner within fifteen days of the close of each month a return —

(*a*) in Form 5, of the International Workers qualifying to become members of the Fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying International Workers (indicating distinctly the nationality of each and every International Worker), and

(*b*) in such form as the Commissioner may specify, of the International Workers (indicating distinctly the nationality of each and every International Worker) leaving service of the employer during the preceding month:

Provided that if there is no International Worker qualifying to become a member of the Fund for the first time or there is no International Worker leaving service of the employer during the preceding month, the employer shall send a 'NIL' return."

[F.No.S-35012/05/2008.SS-II]

(S. K. SRIVASTAVA)
Joint Secretary to the Government of India

Foot Note: - The Employees' Provident Funds Scheme, 1952 was published in the Gazette of India, Part-II, Section 3, Sub-section (i), *vide* number S.R.O. 1506 dated the 2nd September, 1952 and lastly amended *vide* number G.S.R. 689(E), dated the 26th September, 2008.

To

The Manager,
Govt. of India Press,
Mayapuri,
New Delhi.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION-3, SUB-SECTION (i)]

Government of India
Ministry of Labour and Employment
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New Delhi, dated the 1st October, 2008

NOTIFICATION

G.S.R.....(E).-In exercise of the powers conferred by section 6A read with sub-section (1) of section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees' Pension Scheme, 1995, namely: -

1 (1) This Scheme may be called the Employees' Pension (Third Amendment) Scheme, 2008.

(2) It shall come into force on the date of its publication in the Official Gazette.

2 In the Employees' Pension Scheme, 1995, after paragraph 43, the following paragraph shall be inserted, namely:-

"**43A. Special provisions in respect of International Workers.**- The Scheme shall, in its application to International Workers as defined in paragraph 83 of the Employees' Provident Fund Scheme, 1952 be subject to the following modifications, namely: —

(1) For clause (xv)of paragraph 2, the following clause shall be substituted, namely:-

(*xv*) "pensionable service" means the service rendered by the member covered by an international social security agreement for which contributions have been received or are receivable, the period of service rendered and considered as eligible under such agreement.

(2) For sub-para (1) of paragraph 10, the following sub-paragraph shall be substituted, namely:-

10. Determination of pensionable service.-

(1) The pensionable service of the member covered by an international social security agreement shall be determined with reference to the contributions received or are receivable on his behalf in the Employees' Pension Fund, the period of service rendered under a relevant social security programme and considered as eligible for benefits shall be added only for the purpose mentioned under such agreement.

(3) For paragraph 11, the following paragraph shall be substituted, namely:-

11. Determination of pensionable salary.-

The pensionable salary shall be the average monthly pay drawn in any manner including on piece-rate basis during the contributory period of service of the membership of the Employees' Pension Fund:

(4) For paragraph 14, the following paragraph shall be substituted, namely:-

14. Benefits on leaving service before being eligible for monthly members' pension.-

(1) If a member not being an Indian employee, hailing from a country with which India has entered into a social security agreement, has not rendered the eligible service prescribed in paragraph 9 on the date of exit, or on attaining the 58 years of age, whichever is earlier, he/she shall be entitled to a benefit as may be prescribed in the said Agreement on reciprocal basis.

(2) If a member not being an Indian employee hailing from a country with which India has not entered into a social security agreement, has not rendered the eligible service specified in paragraph 9 on the date of exit, or on attaining the 58 years of age, whichever is earlier, his/her entitlement to the withdrawal benefit under paragraph 14 shall be, on the principle of reciprocity, as may be available to Indian employees in that country."

[F.No.S-35012/05/2008.SS-II]

(S. K. SRIVASTAVA)
Joint Secretary to the Government of India

Foot Note: - The Employees' Pension Scheme, 1995 was published in the Gazette of India, Part-II, Section 3, Sub-section (i), *vide* number G.S.R 748(E) dated 16th November, 1995 and the Scheme was last amended *vide* number G.S.R. 688(E), dated the 26th September, 2008.

To

The Manager,
Govt. of India Press,
Mayapuri,
New Delhi.