THE QUESTION OF IMMEDIACY OF PAYMENT OF SOCIAL SECURITY BENEFITS AS PER THE NEW DEFINITION OF "WAGES"

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The recently released FAQs by the Ministry of Labour & Employment have unearthed a legal penumbra. The primary cause of the stir remains, as always, the same – the new definition of "wages" under the Labour Codes. Even though one may reasonably be able to gauge the effect which the uniform definition might have on statutory payouts, the aspect of when one needs to initiate such payments remains to be ascertained. Here, the question of "when" assumes primacy over the question of "how".

Coming back to the FAQs, on being posed with the query of, "*How will the ESI coverage be governed until the finalisation of Rules*?", the Ministry responded by simply stating that, "*The definition of wage has come into force with notification of the Code w.e.f. 21st Nov, 2025*". While the initiative of releasing the FAQs is in itself a laudable step, the referred answer does not do much in answering the hard-hitting question of whether the Employees' State Insurance ("**ESI**") payments are to immediately be made as per the new definition of "wages". A similar response was given on the aspect of gratuity payments as well.

An analysis of the bare provisions of the Codes, as a *sequitur*, becomes absolutely imperative:

EMPLOYEES' PROVIDENT FUND

Before coming on the aspect of immediacy, certain preliminary quandaries must necessarily be cleared. *First*, insofar as the Employees' Provident Funds & Miscellaneous Act, 1952 ("**EPF Act**") is concerned, the same no longer exists in the statute book. Starting from the beginning, vide Notification dated 03.05.2023, the provisions of the EPF Act, insofar as they pertained to the Employees' Pension Scheme, 1995, had already been repealed under the aegis of the Code on Social Security, 2020 ("**CoSS**"). Coming to the Notification dated 21.11.2025, owing to which the Codes were brought into force, Item 3 (which corresponds to the EPF Act) of sub-section (1) of section 164 (the repealing clause) of the CoSS was deliberately not mentioned therein. It was then on 19.12.2025 that a corrigendum to the main Notification dated 21.11.2025 was issued by the Government. By virtue of the same, the entire sub-section (1) of section 164 was brought into force, which took under its ambit the EPF Act as well. The date from which the Corrigendum will apply is also a legal grey area.

The Supreme Court, in ***Commissioner, in Sales Tax, U.P, Lucknow v. Dunlop India Limited***[1], has held that a corrigendum is issued to correct a mistake in the notification, therefore, the same would relate back to the date of issuance of the original notification. In ***Piara Singh v. State of Punjab***[2], it was held that a corrigendum can be issued only to correct a typographical error or omission therein. It cannot have the effect of law nor it can take away the vested right of a person nor it can have the effect of nullifying the rights of persons conferred by the law. The principle that the scope of the notification cannot be enlarged by virtue of a corrigendum was reiterated by the Apex Court in ***State of Andhra Pradesh (Now State of Telangana) v. A.P. State Wakf Board and Others***[3]. One might reasonably argue that the scope of the Notification dated 21.11.2025 has

1. *(1994) 92 STC 571 (SC).*
2. *(2000) 5 SCC 765 : AIR 2000 SC 2352 (SC).*
3. *2022 INSC 155 (SC).*

been enlarged by the corrigendum notification 19.12.2025 as the former did not cover the repeal of the remaining provisions of the EPF Act under its ambit. Until the same is challenged, it would be safe to assume that the effect of the corrigendum would go back to the date of the original Notification i.e. to 21.11.2025.

Regardless, in view of clause (b) of sub-section (2) of section 164 of the CoSS, the Employees' Provident Funds Scheme, 1952, the Employees' Deposit Linked Insurance Scheme, 1976, the Employees' Pension Scheme, 1995 and the Tribunal (Procedure) Rules, 1997 framed under the EPF Act will remain in force, to the extent they are not inconsistent with the provisions of this Code for a period of one year from the date of commencement of the CoSS. Simply speaking, this provision provides that the Schemes under the EPF Act will continue to remain in force for a period of one year from the date of the commencement of the CoSS. In this regard, it would be profitable to mention the impute of sections 15 and 16 of the CoSS as well. Section 15 provides that the Central Government may frame the relevant schemes for payment of provident fund, pension and employees' deposit linked insurance by notifying the same. The effect of such Schemes may be prospective or retrospective. Thus, the Central Government will necessarily notify the said Schemes prepared by it under the CoSS. Section 16 then goes on to state that under the said Schemes (the ones notified under aegis of the CoSS), the Government may establish a Provident Fund, a Pension Fund and an Insurance Fund to which the contributions will have to be made as per "wages" under the CoSS.

From this, it clearly emerges that PF contributions, as per the definition of "wages" under the CoSS, will have to be made as per the Schemes notified by the Central Government under the Codes. Till such time (one year from the date of the commencement of the CoSS), the old Schemes will continue to be in effect. It is trite that when a statute provides for a thing to be done in a particular manner, then it has to be done in that manner, and in no other manner. (See, ***Chandra Kishore Jha v Mahavir Prasad and Others***[4]). Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule. Even if the literal interpretation results in hardship or inconvenience it has to be followed (See, ***Raghunath Rai Bareja v. Punjab National Bank***[5]).

An argument can be made that even though the old Schemes are still applicable, the parent law i.e. the EPF Act, from which the Schemes derive certain elements, is no longer in force, For instance, Paragraph 29 of the Scheme provides for payment of PF contributions are to be made on "basic wages", Dearness Allowance and Retaining Allowance. Now, the EPF Act which defined "basic wages" is no longer in force. One may, in this regard, take aid of sections 6 and 24 of the General Clauses Act, 1897 ("**GCA**"). Section 6 of the GCA provides that any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed will continue to operate even after the repeal. Section 24 further goes on to say that any Scheme made under the repealed enactment will continue to remain in force till the same is subsequently subsumed by a corresponding scheme notified under the new law. Clearly, section 164(2)(b) of the CoSS imbibes this principle by continuing the Schemes for a year from the commencement of the CoSS. The question of whether a right still accrues will have to be seen after analysing the new statute and its intention, as held by the Supreme Court in ***State of Punjab v. Mohar Singh***[6].

Herein, the intention of the Legislature has been spelt out under clause (a) of sub-section (2) of section 164 of the CoSS. It lays down that any benefit provided or given under any provisions of repealed enactment (payment of PF benefits as per the definition of "Basic Wages", DA and

4. *(1999) 8 SCC 266 (SC).*
5. *(2007) 2 SCC 230 (SC).*
6. *AIR 1955 SC 84 (SC).*

Retaining Allowance) shall be deemed to have been provided for such purpose under the corresponding provisions of this Code to the extent they are not contrary to the provisions of this Code. This provision answers the question clearly. While the definition of "basic wages" under section 2(b) of the EPF Act is not the same as the definition of "wages" under CoSS (and thus, ostensibly contrary as the principles enshrined in ***Bridge and Roof***[7] and ***Vivekananda Vidyamandir***[8] will not apply while interpreting "wages" under the CoSS), such a situation was contemplated by the Legislature in keeping the Schemes alive for a period of one ear from the commencement of the CoSS. The "intention" of the Legislature, as has to be seen under the dictates of the GCA, does not appear to be contrary.

EMPLOYEES' STATE INSURANCE

As stated above, the FAQs state that, with respect to ESI, *the definition of wage has come into force with notification of the Code w.e.f. 21st Nov, 2025*. Section 29 of the CoSS states that ESI "contributions" will have to be paid under the CoSS to the ESI Corporation. The corresponding rates will be prescribed by the Government. As was the case with PF, the Rules and Regulations made under the ESI Act will continue to remain force for a period of a one year from the date of the commencement of the CoSS.

It would be appropriate to refer the 1st Schedule of the CoSS. The third Proviso to the Second Item of First Schedule states that the contribution from the employers and employees of an establishment will be payable under section 29 on and from the date on which any benefits relating to the ESI are provided by the Corporation to the employees of the establishment and such date shall be notified by the Central Government. Thus, for the employers to make contributions under section 29 of CoSS, the Government will have to issue a separate Notification. Till date, no such Notification has been issued by the Central Government till date.

PAYMENT OF GRATUITY

The Ministry of Labour & Employment under its FAQs has affirmed that gratuity, from 21.11.2025, will have to be made as per the new definition of "wages". Unlike PF and ESI, payment of gratuity is not dependent upon any Scheme or Rules or Regulations. Gratuity has to be paid as per the substantive provisions of law, which are not dependent upon the rules. (See, ***Union of India and Others v. Alok Kumar***[9]).

It would not be correct to state that the provisions pertaining to payment of gratuity as per the new definition of "wages" or w.r.t. Fixed Term Employees is retrospective application of law. The difference between prospective, retrospective and retroactive law was explained by the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma and Others***[10], which is as follows:

Prospective statute: It operates from the date of its enactment conferring new rights.

Retrospective statute: It operates backward and takes away or impairs vested rights acquired under existing laws.

Retroactive statute: It does not operate retrospectively. It operates in the future. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events.

The employees in question were already employed and thus a right has been granted in the present based on an event (employment) which had happened in the past. The application of the gratuity related provisions, w.r.t. FTEs, is retroactive and not retrospective in nature.

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7. Bridge and Roof Co. (India) Ltd. v. Union of India, (1963) 3 SCR 978 (SC).

8. Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidyamandir and others, 2019 LLR 339 (SC).

9. 2010 (125) FLR 1015 (SC).

10. (2020) 9 SCC 1 (SC).