Introduction
Definitions (Section 2)

Question 1
State whether the following statement is true or false and give reason therefor with reference to the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.
“Basic wages include the cash value of food concessions”

Answer
This statement is false because the expression basic wages does not include the cash value of food concessions. 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.

Question 2
Define the term ‘Employer’ under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

Answer
Section 2(e) read with Section 2(k) of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 defines employer as –

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory, and
(ii) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a Manager, Managing Director, Managing Agent, such Manager, MD or Managing Agent shall be treated as employer.
4.2 Business Laws, Ethics and Communication

Question 3
Vimal is an employee in a Company. The following payments were made to him during the previous year:

(i) Piece rate wages
(ii) Productivity bonus
(iii) Additional dearness allowance
(iv) Value of Puja gift.

Examine as to which of the above payments form part of “Basic Wage” of Vimal under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

OR

Explain clearly the meaning of the term ‘Basic wages’ as defined under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. State also what is not included in the term ‘Basic Wages’.

Answer

Basic Wages:
As per Section 2 of the Employees’ Provident Funds and Miscellaneous Provision Act, 1952, the “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 concessions;
(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; or
(iii) any presents made by the employer.

Applying the above provisions of this Act to the given problem, the Basic wages of Vimal will include only piece rate wages but it excludes the Productivity bonus, additional dearness allowance and value of puja gift.

Question 4
What is the meaning of ‘factory’ under the EPF & MP Act, 1952? Examine, with reference to case laws.

Answer

Employees’ Provident Funds & Miscellaneous Provisions Act, 1952 applies to every factory employing 20 or more persons engaged in an industry specified in Schedule I [Section 1(3)]. Hence, the definition of ‘factory’ is important. ‘Factory’ means any premises, including the
precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power [Section 2(g)]. As per Section 2(ic), 'manufacture' or 'manufacturing process' means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal. Thus, this definition is very wide. It includes workshop for repairing and servicing of cars. [Lawly Sen v. RPFC (1959) 1 LabLJ 272 & AIR 1959 Pat 271].

Printing press of University is 'factory' within meaning of Section 2(g), although it is run by a larger organisation carrying on other activities falling outside the PF Act. [Andhra University v. RPFC(1985) 4 SCC 509 & AIR 1986 SC 463.]

**Industries as per Schedule I:** The industries to which the Act applies are specified in Schedule I to the E PF & Miscellaneous Provisions Act. As per Section 4, the Central Government can add any industry to the schedule by issuing a notification. Under these powers, various industries have been added from time to time. The schedule covers almost all types of industry, including cement, cigarettes, iron and steel, textiles, chemicals, food products, aerated water, paper and paper products, electrical, mechanical and general engineering products, beedi, automobile repairing and servicing, medical and pharmaceutical preparations, brick making etc. Practically, all organized industries are covered under the Act. [However, tea factories in Assam have been exempted vide para 1(3)(a) of EPF Scheme,1952].

**Employees’ Provident Fund Scheme (Section 5)**

**Question 5**

Write a note on the composition and functions of Central Board of Trustees under the EPF & MP Act, 1952.

**Answer**

**Central Board of Trustees:**

Under Section 5A of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the Central Board of Trustees consists of the following persons as members:

(a) Chairman and Vice-Chairman appointed by the Central Government.
(b) Central Provident Fund Commissioner as ex-officio member.
(c) Not more than 5 officials of Central Government.
(d) Not more than 15 persons representing the State Government.
(e) 10 persons representing employees in the establishments to which the Scheme applies, appointed by the Central Government.
The functions of the Board are as follows:

The fund of the Employees’ Provident Funds Scheme (EPF) under Section 5, the Employees’ Pension Scheme under Section 6A and the Employees’ Deposit Linked Insurance Scheme (EDLI) under Section 6C is vested in the Central Board of Trustees. The fund is administered by them as provided in the Scheme. The Central Board will perform other functions as may be required under any provisions of the PF Scheme, the pension Scheme and the Insurance Scheme [Section 5A].

**Question 6**

An Executive Committee is to be constituted to assist the Central Board under the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. State the composition of such Executive Committee.

**Answer**

The Central Government may by notification in the Official Gazette, constitute with effect from such date as may be specified therein, an Executive Committee to assist the Central Board in the performance of its functions under Section 5AA of the Employees’ Provident Funds and Miscellaneous Provision Act, 1952.

The Executive Committee shall consist of the following persons as members, namely:

a) a Chairperson, the secretary to the Government of India from the Ministry of Labour and Employment appointed by the Central Government;

b) two persons Additional secretary to the Government of India and the Financial Advisor from the Ministry of Labour and Employment appointed by the Central Government.

c) three persons representing the Governments of the States (presently are the representative of the Government of the Assam, Rajasthan and of the Tamil Nadu) appointed by the Central Government.

d) three persons representing the employers of the establishments to which the scheme applies appointed by the Central Government.

e) three persons representing the employees in the establishments to which the scheme applies appointed by the Central Government.

f) the Central Provident Fund Commissioner of Employees’ Provident Fund Organisation

[Note : The Reconstitution of Executive Committee is as per the Notifications 1045(E) dated 13th May, 2011 by the Ministry of Labour and Employment]

**Question 7**

State whether the following statement is true or false and give reason therefor with reference to the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.
“The chairman of the Executive Committee is appointed by the Central Board”.

Answer

This statement is false because the Chairman of the Executive Committee is appointed by the Central Government and not the Central Board.

Question 8

State the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 regulating the quantum of contribution to be made by the employer and employee to the provident fund. Is it possible for an employee to increase the amount of his contribution to the provident fund more than the minimum contribution as statutorily prescribed?

Answer

Contribution to Provident Fund under the EPF and Miscellaneous Provisions Act, 1952:

Section 6 of the EPF and MP Act, 1952 regulates contribution to Provident Fund Scheme established under the Act. The employer’s contribution shall be 10% of the basic wages, dearness allowance and retaining allowance, if any. The employee’s contribution shall be equal to the contribution payable by the employer in respect of him.

Dearness allowance includes cash value of any food concession allowed to the employees. Retaining allowance means the sum paid for retaining the service, when the factory is not working. The Central Government may by notification make the employer’s contribution equal to 12% for certain establishments class of establishments.

The above rule will prevail irrespective of whether the employer employs the person directly or through a contractor.

An employee can at his will voluntarily contribute, beyond 10%. But the employer shall not be under an obligation to pay any contribution over and above his contribution payable under section 6 of the said Act.

Question 9

While an employee may increase his contribution to Provident Fund, is an employer also liable to proportionately increase his contribution to the above under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952? Explain.

Answer

Section 6 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 provides that an employee can at his will contribute beyond 10% if the scheme makes provision therefore 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.
4.6 Business Laws, Ethics and Communication

Employees' deposit-linked Insurance Scheme

Question 10

Write a note on Employees Deposit-Linked Insurance Scheme.

Answer

The purpose of the Employees' Deposit Linked Insurance Scheme is to provide life insurance benefits to employees who are already covered under PF. Section 6C(1) empowers Central Government to frame a scheme for the purpose of providing life insurance benefits to employees of any establishment or class of establishments to which PF Act is applicable.

Under the scheme a Deposit Linked Insurance Fund is set up. Employer is required to pay contribution which cannot be more than 1% of ‘pay’ of employee [Section 6C(2)]. Employer is also required to pay administration charges for the Insurance Scheme [Section 6C(4)(a)]. The Insurance Fund will vest in Central Board of Trustees and will be administered by Central Board as per Insurance Scheme [Section 6C(5)]. The Insurance Scheme can provide for all matters specified in Schedule IV. The Scheme can have provisions which can take effect prospectively or retrospectively [Section 6C(7)].

Schedule IV of the Act provides that Insurance Scheme can provide for (a) Employees to whom it will apply (b) Manner in which accounts will be kept and investment of moneys made as per pattern determined by Central Government (c) Procedures like forms, registers, records and returns (d) Nomination to receive insurance amount (e) Scale of insurance benefits and conditions for grant of benefit (i) Mode of payment of amount due to members of family of employees (j) Any other matter necessary for proper administration and implementation of Scheme.

Accordingly, Employees' Deposit Linked Insurance Scheme has been prepared, which has been made effective w.e.f. 1st August, 1976.

The employee does not contribute any amount to the Scheme. The salary limit for coverage of employees is same as that of Employees Provident Fund Scheme.

Question 11

The Employees' Deposit Linked Insurance Scheme, under Section 6C of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has been amended by the Central Government. State these amendments.

Answer

Amendments in the Employees' Deposit Linked Insurance Scheme: As per the Notification No.G.S.R.523 (E),dated 18th June,2010 and Notification No. G.S.R. 9(E),dated 8th January ,2011 amendments made in Employees' Deposit Linked Insurance Scheme, 1976 by the Employees' Deposit Linked Insurance (Amendment) Scheme,2010 and Employees' Deposit Linked Insurance (Amendment) Scheme, 2011 by the Ministry of Labour and Employment.
Employees' Deposit Linked Insurance (Amendment) Scheme, 2010

“The Central Government amended the Employees' Deposit Linked Insurance Scheme, 1976 by Employees' Deposit Linked Insurance (Amendment) Scheme, 2010. According to which on the death of an employee, who is member of the Fund or of a provident fund exempted under section 17 of the Act, the person entitled to receive the provident fund accumulations of the deceased shall, in addition to such accumulations be paid an amount, equal to the average balance in the account of the deceased in the fund or a provident fund exempted under section 17 of the Act, as the case may be, during preceding twelve months or during the period of his membership, whichever is less, except where the average balance exceeds rupees fifty thousand, the amount payable shall be rupees fifty thousand plus 40% of the amount in excess of fifty thousand subject to a ceiling of Rupees one lakh.”

This above provision says that the EDLI amount is equal to the average balance of incumbent's PF in the last 12 months or the overall balance, whichever is less. But if the balance exceeds ₹50,000, the incumbent's nominee will get ₹50,000 plus 40% of the excess balance up to a total of ₹1 lakh.

Employees' Deposit Linked Insurance (Amendment) Scheme, 2011

As per the Notification No. G.S.R. 9(E), dated 8th January, 2011, the Central Government revised the benefits provided to the employees under the Employees' Deposit Linked Insurance (Amendment) Scheme, 2010. Under the revised scheme, the benefit provided in case of death of an employee who was member of the Fund or of a Provident fund exempted under Section 17 of the Act at the time of the death, their family will get 20 times of the average wages of the last 12 months of the member.

By this amendment, benefits provided to the employees under the Employees' Deposit Linked Insurance (Amendment) Scheme, 2010 has been enhanced. According to which maximum benefits under the scheme will now be ₹1,30,000/-, as the wage ceiling upto which contribution can be paid under the scheme is Rs. 6500.

This amendment has changed the methodology of computation by introducing a new and additional method for computation of benefit that has to be paid to the nominee of the deceased along with existing method of computation i.e., as per the EDLI (Amendment) Scheme, 2010, which ever is higher.

Question 12

An employee of limited company filed a claim for provident fund settlement with the Provident Fund Commissioner. However, he did not get any settlement from the authority even after six months. Referring to the EPF & MP Act, 1952 what course of action an authority should have taken in this respect.
4.8 Business Laws, Ethics and Communication

Answer

The Provident Fund claims complete in all respects submitted along with the requisite documents shall be settled and the benefit amount paid to the beneficiaries within 30 days from the date of its receipt by the Commissioner. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application. In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.

Other provisions

Question 13

Describe the procedure for determination of moneys, due and escaped from employer under EPF & MP Act, 1952?

Or

Explain the provisions of Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 with regard to determination of 'Escaped Amount' after an officer has passed an order concerning 'Determination of Amount' due from an Employer under the Act.

Answer

Determination of moneys due from employers (Section 7A) : Section 7A of the Act gives power to the authorities mentioned therein i.e., Central PF Commissioner, Additional Central PF Commissioner, Deputy PF Commissioner or any Regional PF Commissioner Assistant PF Commissioner to determine the amount due from an employer under the provisions of the Act and the Schemes. This involves decisions on various points of quasi-judicial nature, viz.

(i) amount due as contribution.
(ii) the date from which the same is due.
(iii) the administrative charges.
(iv) amount to be transferred under Sections 15 or 17 of the Act.
(v) any other charges payable by the employer under the Act.

The authorities have been given power to conduct such enquiry as may be deemed necessary and for this they have been granted powers as are vested in a Court. An order must not be made unless the employer concerned is given a reasonable opportunity of representing his case (Sub-section 3).

Where the employer, employee or any other person required to attend the inquiry under Subsection (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due
from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

Where an order under Sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry.

No such order shall be set aside merely on the ground that there has been an irregularity in the service of show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer. However, where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that appellant has withdrawn the appeal, no application shall lie under this Sub-section for setting aside the ex parte order [Section 7A(4)].

No order passed under this section shall be set aside on any application under Sub-section (4), under notice thereof has been served on the opposite party.

Thus, the scope of enquiry and manner of conducting the enquiry is at the discretion of the authority. As the proceedings shall be quasi-judicial and shall vitally affect the rights of the parties the principle of natural justice must be strictly followed in deciding the dispute in the proceeding. The employer is entitled to a reasonable opportunity of being heard. The order made under this section shall be final and will not be called in question in any Court of law.

**Determination of escaped amount (Section 7C)**: Where an order determining the amount due from an employer under Section 7A or Section 7B has been passed and if the officer who passed the order:

(a) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;

(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under Section 7A or Section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer.

He may, within a period of five years from the date of communication of the order passed under Section 7A or Section 7B, re-open the case and pass appropriate order re-determining the amount due from the employer in accordance with provisions of this Act.

However, no order re-determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case by other documents available on record.
4.10 Business Laws, Ethics and Communication

Question 14

Examine the rules relating to review of order regarding determination of applicability of the EPF & MP Act, 1952 and the money due.

Answer

Any person aggrieved by order under Section 7A(1) can make application for review of the order in following cases – (a) if new and important evidence is discovered which could not be produced earlier as it was not within his knowledge even after due diligence (b) there is some mistake or error apparent on the records or (c) any other sufficient reason. No application for review can be made if appeal was filed.

The officer can himself review the order on his own motion. [Section 7B(1)]. The officer can either reject the application for review if there are not sufficient grounds for review, or he can grant the review. [Section 7B(4)]. Appeal cannot be filed against order rejecting the application for review. However, if fresh order is passed after the review, appeal can be filed against such order [Section 7B(5)]. Application for review should be made within such form and manner and in time as may be specified in the Scheme.

In Balu Fire Clay Niwas v. U.O.I., 2003 LLR 578 (Jhar HC), it was held that when statute provides for review, it cannot be contended that petitioner should have filed appeal against the order. It was also held that review petition should be disposed of by a speaking order.

Question 15

Examine the appellate jurisdiction and the procedures relating thereto under the Employees’ Provident Funds and Miscellaneous Provision Act, 1952.

Answer

An appeal against the order of officer made u/s 1(3), 1(4), 3, 7A, 7B, 7C or 14 B can be made to Employees’ Provident Funds Appellate Tribunal. [Section 7-I].

The Tribunal is headed by a Presiding Officer who is or has been qualified to be judge of a High Court or a District Judge. [Section 7D]. The Tribunal has been set up at New Delhi w.e.f. 1-7-1997, to hear appeals. The Tribunal has all India jurisdiction. [Notification SO 491(E) dated 30-6-1997]. The presiding officer holds office for five years or until he attains the age of 62 years, whichever is earlier [Section 7E]. He can resign from his office by giving three months’ notice. He can be removed after following prescribed procedure [Section 7F]. Staff of Tribunal will be supplied by Central Government [Section 7H].

The Tribunal, during proceedings, will give opportunity of hearing to parties. It will then pass order (a) confirming, modifying or annulling the order appealed against, or (b) remand the matter back to the authority for fresh directions, with such directions as the Tribunal may deem fit [Section 7L(1)]. The Tribunal has powers to rectify its order, if it is apparent from the records. Such rectification can be made within five years from date of the order. If such rectification has effect of increasing the liability of the employer, notice has to be given to the
employer and opportunity of hearing will be given before passing order [Section 7L(2)]. An order passed by the Tribunal is final and no appeal can be filed in any Court of law against the order [section 7L(4)].

Appeal can be entertained only after depositing 75% of amount demanded. However, the Tribunal can waive or reduce the deposit, for reasons to be recorded in writing [Section 7-O].

Question 16
State whether the following statement is true or false and give reason therefor with reference to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

“Employee Provident Fund Appellate Tribunal shall consist of three judges”.

Answer
This statement is false as the Employees' Provident Funds Appellate Tribunal shall consist of one judge.

Question 17
Briefly explain the formation of Employees' Provident Funds Appellate Tribunal under the EPF & MP Act, 1952.

Answer
The Central Government may, by notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the Employees' Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by the EPF & MP Act, 1952 and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal.

Question 18
R, a 57 years old district judge was appointed by the Central Government as Presiding Officer of the Employee's Provident Funds Appellate Tribunal for a period of five years. After three years, he (R) resigns from his office and ceases to work with immediate effect without handing over the charge to his successor, who was not appointed by the Government till that date.

Examine the validity of R's action to cease work under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer
Section 7 F of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 provides that the Presiding Officer of a Employees’ Provident Funds Appellate Tribunal may by notice in writing under his hand addressed to the Central Government, resign his office provided that the Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.
Hence, R’s action is invalid as per above provisions. He should obtain permission from the Central Government to do so.

**Question 19**

*What are the orders that can be passed by Employees’ Provident Funds Appellate Tribunal on appeals against the orders passed by the Central Government or authorized officers?*

**Answer**

The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the orders appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order as the case may be, after taking additional evidence, if necessary.

A Tribunal may at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record amend any order passed by it under sub-section (1) and shall make such amendment in the order if the mistake is brought to the notice by the parties to the appeal.

However, an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this sub-section unless the Tribunal has given notice to him of its intention to do so and has allowed him reasonable opportunity of being heard.

A Tribunal shall send a copy of every order passed under this section to the parties to the appeal. Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law.

**Question 20**

*State whether the following statement is true or false and give reason therefor with reference to the Employees Provident Funds and Miscellaneous Provisions Act, 1952.*

“An employer generally has to deposit 50% of the money due from him so as to go on appeal “

**Answer**

This statement is false as an employer under Section 7-O of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 has to deposit 75% of the money due from him so as to go on appeal.

**Question 21**

*S retired from the services of PQR Limited, on 31st March, 2009. He had a sum of ₹ 5 lac in his Provident Fund Account. It has become due for payment to S on 30th April, 2009 but the company made the payment of the said amount after one year. S claimed for the payment of interest on due amount at the rate of 15 percent per-annum for one year. Decide, whether the*
Claim of S is tenable under the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

Answer

According Section 7Q of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

As per above provision, S can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here in the absence of specified rate he(S) can claim only 12 percent per annum interest on the due amount.

Hence claim of S for interest rate of 15% is not tenable.

Question 22

Explain briefly the mode of recovery that may be followed by the recovery officer under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 for recovering the amount due from an employer.

Answer

Recovery of money due from employers: Where any amount is an arrear under section 8, of EPF & MP Act, 1952 the authorised officer may issue to the Recovery Officer a certificate under his signature specifying the amount of arrears. The Recovery Officer, on receipt of such certificate shall proceed to recover the amount specified therein from the establishment or as the case may be, the employer by one or more of the modes mentioned below:

(a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;
(b) arrest of the employer and his detention in prison;
(c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer (Section 8B);

The attachment and sale of any property under section 8B shall first be effected against the properties of the establishment. Where such attachment and sale is insufficient for recovery the whole of the amount of arrears specified in the certificate, the Recovery Officer may then take proceedings against the property of the employer for recovery of the whole or any part of such arrears.

The authorised officer may issue a certificate under section 8B(1) notwithstanding that proceedings for recovery of the arrears by any other mode have been taken [Section 8B(2)].
Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of the amount, the authorised officer may grant time for the payment of the amount, and thereupon the recovery officer shall stay the proceedings until the expiry of the time so granted [Section 8E].

Question 23

State the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 relating to the protection of the amount standing to the credit of an employee in the provident fund against attachment.

Or

X, an employee in ABC Ltd (covered by the EPF and MP Act, 1952) died in an accident. State to whom the amount standing in his account to be payable under the provisions of the Act.

Answer

Protection of the amount standing to the credit of an employee in provident fund against attachment: As per Section 10 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or exempted employee, and neither the official assignee appointed under the Presidency Town Insolvency Act, 1909, nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on, any such amount. This protection also applies to provident fund, pension and insurance amount receivable by employee under the scheme.

The amount standing to the credit of the person at the time of his death is payable to his nominees under the scheme or the rules vest in nominees. And the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court. (Section 10, EPF & MP Act, 1952).

Question 24

A company which is covered by the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 was adjudged insolvent and an order for winding up was made. State, in this connection, whether the Provident Fund is attachable and whether the payment of Provident Fund contribution be considered as priority over other Debts of the Company.

Or

Discuss under the Employees’ Provident Funds and Miscellaneous Act, 1952 as to whether the Provident fund contribution is a preferential payment in case of the employer being declared insolvent.
Answer

Protection against attachment: According to section 10 of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member or of any exempted employee in the Provident Fund shall not in any way be capable of, being assigned or charged and shall not be liable to attachments under any decree order of any court in respect of any debt or liability, incurred by the member or the exempted employee. Neither the official assignee appointed under the Presidency town Insolvency Act, 1909 nor any Receiver appointed under the Provincial Insolvency Act 1920 shall be entitled to have any claim on any such amount. Such amount shall also not be liable to attachment under any degree or order of any court.

Priority of Payment of Contribution over other debts (Section 11): If the employer is adjudged an insolvent or if the employer is a company and an order for winding thereof has been made, the amount due from the employer whether in respect of the employee's contribution or the employer's contribution must be included among the debts which are to be paid in priority to all other debts under Section 49 of the Presidency-Towns Insolvency Act, Section 61 of the Provincial Insolvency Act, Section 530 of the Companies Act, 1956, in the distribution of the property of the insolvent or the assets of the company. In other words, this payment will be a preferential payment provided the liability therefor has accrued before this order of adjudication or winding up is made.

Question 25

An Inspector appointed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 makes an inspection at 10 p.m. (five hours after factory timings) and seeks to take copies of the “Shareholders’ Register”. How far under the Act is his action reasonable?

Answer

Under Section 13(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, an Inspector can inspect and make copies of, or take extract from any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence.

In the present case the Inspector had sought to take copies of the “Shareholders’ Register” which is irrelevant document for the purpose of EPF and MP Act, 1952. Moreover, he has visited the office after the working hours (10.00 pm) which is not reasonable.

Question 26

What are cognizable offences under the Act?

Answer

Cognizable offence (Section 14AB): The offences relating to default in payment of contribution by the employer is a cognizable offence. A cognizable offence is one where the police can arrest a person without warrant.
Cognizance and trial of offence (Section 14AC): The complaints regard to offences under the Act, the scheme or the Pension Scheme or Insurance Scheme and their cognizance.

The essential conditions of cognizance of offences are:

(a) There must be a report in writing of the facts constituting such offence.

(b) This report must be made with the previous sanction of the:

(i) Central Provident Fund Commissioner; or

(ii) Such officer as may be authorised by the Central Government.

(c) The report must be made by an Inspector appointed under Section 13.

These conditions being co-existent, no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act, or the Scheme or the Pension Scheme or the Insurance Scheme.

Question 27

State whether the following statement is true or false and give reason therefor with reference to the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

“Default in payment of contribution by employer is a cognizable offence”.

Answer

This statement is true because according to Section 14AB of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, offences relating to default in payment of contribution by the employer is a cognizable offence. A cognizable offence is one where the police can arrest a person without warrant.

Question 28

An employee leaves the establishments in which he was employed and gets employment in another establishment wherein he has been employed. Explain the procedure laid down in the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 in this relation.

Or

Describe in brief the mode of transfer of balance to the credit of Provident Fund Account of an employee leaving one organisation and joining another organisation, to the new employer under the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

Or

An employee working in an establishment covered by the E.P.F. and M.P. Act, leaves his employment and takes up employment in another establishment. State in this connection:

(i) How shall the amount accumulated to his P.F. Account be transferred?

(ii) What steps shall be taken if the establishment in which he has joined is not covered by the Act?
(iii) What would be your answer if the establishment in which he was previously working is not covered by the Act?

Answer

Transfer of accumulated amount to the credit of Employees' Provident Funds on change of employment: Section 17-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for the transfer of accounts of an employee in case of his leaving the employment and taking up employment and to deal with the case of an establishment to which the Act applies and also to which it does not apply. The option to get the amount transferred is that of the employee. Where an employee of an establishment to which the Act applies leaves his employment and obtains re-employment in another establishment to which the Act does not apply, the amount of accumulations to the credit of such employees in the Fund or, as the case may be, in the provident Fund in the establishment left by him shall be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer. The transfer has to be made within such time as may be specified by the Central Govt. in this behalf. [Sub-Section (1)].

Conversely, when an employee of an establishment to which the Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him, if the employee so desires and the rules in relation to such provident fund permit, may be transferred to the credit of his account in the fund or as the case may be, in the provident fund of the establishment in which he is employed [Sub-Section (2)].

Question 29

Is the amount standing to the credit of a member of the Provident Fund attachable in the execution of decree or order of the Court? Examine the law, on this point, laid down in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer

Attachment of Provident Fund: According to Section 10 of E.P.F. & M.P. Act, 1952 the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or the exempted employee, and neither the official assignee appointed under the Presidency Towns Insolvency Act nor any receiver appointed under the Provincial Insolvency Act shall be entitled to or have any claim on, any such amount.

The amounts standing to the credit of aforesaid categories of persons at the time of their death and payable to their nominees under the scheme or the rules vest in nominees, and the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any court.
Question 30

Explain the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 authorising certain employers to maintain a Provident Fund Account.

Answer

Section 16-A of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 empowers the Central Government to authorize to certain employers to maintain a P.F. Account. This section states, the Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorize the employer by an order in writing, to maintain a provident fund account in relation to the establishment subject to such terms and conditions, as may be specified in the scheme.

No authorization shall, however, be made under this sub-section, if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Act during the three years immediately preceding the date of such authorization.

Where an establishment is authorised to maintain a provident fund account as aforesaid, the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the scheme.

Any authorization made under this Section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorization or where he commits any offence under any provisions of this Act.

Before cancellation the authorization, the Central Government shall give the employer a reasonable opportunity of being heard.

Question 31

State the establishments, which were exempted from the operation of EPF & MP Act, 1952?

Answer

The EPF & MP Act, 1952 does not apply to:

(a) Any establishment registered under the Co-operative Societies Act, 1912, employing less than 50 persons and working without the aid of power; or

(b) To any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or
(c) To any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits; or

(d) Any other establishment newly set up until the expiry of 3 years from the date on which the establishment is, or has been set up.

Question 32

Manorama Group of Industries sold its textile unit to Giant Group of Industries. Manorama Group contributed 25% of total contribution in Pension Scheme, which was due before sale under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The transferee company (Giant Group of Industries) refused to hear the remaining 75% contribution in the Pension Scheme. Decide, in the light of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, who will be liable to pay for the remaining contribution in case of transfer of establishment and upto what extent?

Answer

The problem as asked in the question is based on the provisions of section 17(B) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Accordingly where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall be jointly or severally liable to pay the contribution and other sums due from the employer under the provisions of this Act or the Scheme, as the case may be, in respect of the period upto the date of such transfer. It is provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

It would be thus evident from the aforesaid provisions that 17-B deals with the liability of transferor and transferee in regard to the money due under (a) the Act or (b) the Scheme (c) and Pension Scheme. In the case of the transfer of the establishment brought in by sale, gift, lease etc. The liability of the transferor and transferee is joint and several, but it is limited to the period upto the date of transfer.

Therefore applying the above provisions in the given case the transferor Manorama Group of Industries, the transferor has paid only 25% of the total liability as contribution in Pension Scheme before sale of the establishment. With regards to remaining 75% liability both the transferor and transferee companies are jointly and severally liable to contribute. In case, the transferor refuses to contribute, the transferee will be liable.

The liability is limited upto the date of transfer and upto remaining amount. Further, the liability of the transferee i.e. Giant Group of Industries, is limited to the extent of assets obtained by it from the transfer of the establishment.
Question 33

*Explain the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 regarding the following:*

(i) rate of interest on amount due from the employer under the Act.

(ii) maximum limit of interest rate

(iii) the period for which the employer is liable to pay the said interest.

**Answer**

**Rate, limit and period of payment of interest:** As per Section 7Q of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952

(i) the employer shall be liable to pay simple interest at the rate of 12 per cent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act.

(ii) although limit of interest rate is not given in the Act, but it is clearly given the higher rate of interest specified in the Scheme cannot exceed the lending rate of interest of any scheduled bank.

The period for which the employer is liable to pay the interest is from the date on which the amount has become so due till the date of its actual payment.

**EXERCISE**

1. Kumar & Sons company sold its manufacturing unit to X & Co. Kumar & Sons contributed 30% of total contribution in pension scheme which was due before the sale under the EPF&MP Act, 1952. X & Co. refused to bear remaining 70% of the contribution in the pension scheme. Decide who will be liable to pay the remaining contribution?

   [Hint: Both the parties are liable jointly and severally for the remaining contribution as per the Section 17 B of the EPF&MP Act, 1952]

2. State whether the following statement is correct/incorrect.

   (i) The maximum contribution that an employee can make to his provident fund account is 10%.

   (ii) The amount of the provident fund of an employee is not attachable even after it is has been received by the employee.

   [Hint: (i) Incorrect as per the provision given under Section 6 of the EPF&MP Act, 1952]

   (ii) Incorrect as per section 10 of the EPF&MP Act, 1952]

3. Generally the Employees’ Provident funds and Miscellaneous Provisions Act, 1952 applies to entities employing more than

   (a) 10 persons.

   (b) 20 persons.

   (c) 100 persons.
4. The Central Government may apply the provisions of this act even if it employs less than required persons.
   (a) True.
   (b) False.

[Hint: Option (a) as per section 1(3)(b) of the Employees’ Provident Funds and Miscellaneous Act, 1952]

5. The liability for employer to contribute under the Employees’ Provident Funds etc. Act, 1952 is 10% of the employees’ emoluments.
   (a) True.
   (b) False.

[Hint: True, according to section 6 of the Employees’ Provident Funds and Miscellaneous Act, 1952]

6. The maximum contribution that an employee can make to his provident fund account is 10%.
   (a) True.
   (b) False.

[Hint: False, because according to section 6 of the Employees’ Provident Funds and Miscellaneous Act, 1952 the maximum contribution can be 12%]