Employment Laws
Vol. 6: No.34
November 24, 2025

Sakshi Singhal
Senior Associate

PROVIDENT FUND OF INTERNATIONAL WORKERS

The Division Bench of the High Court of Delhi (**DHC**), on November 4, 2025, in the connected matters of *Spice Jet and LG Electronic* case,[1] delivered a common judgment addressing the challenge to special provisions made for 'International Workers' (**IW**s)[2] under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**Act**).

Brief Facts

An October 2008 notification,[3] and the substituting September 2010 notification.[4] These notifications inserted and later substituted Paragraph 83 in the Employees' Provident Fund Scheme, 1952 (**Scheme**), making special provisions for IWs.

The challenge before the DHC centred on the definition of 'Excluded Employee' for IWs. While generally, domestic employees whose salary exceeded Rs. 15,000 per month are considered 'excluded employees' and are not mandated to join the Fund, the petitioners argued that Paragraph 83 requires non-excluded IWs (covered IWs) to contribute to the Fund irrespective of the quantum of pay drawn by them. The petitioners contended that this differential treatment, based on nationality, lacked an intelligible differentia and thus violated Article 14 of the Constitution.

The petitioners also challenged associated demands for deposits of Provident Fund (**PF**) dues and summoning orders issued under Section 7A of the Act. They argued that the substituted Paragraph 69, which allows IWs to withdraw the full amount standing to their credit only after attaining the age of 58 years, was unreasonable, especially since such employees usually come to India to work for short durations of 2 to 5 years.

DHC's Judgement & Reasoning

The DHC dismissed the writ petitions, upholding the validity of Paragraph 83.

It applied the established two-pronged test for permissible classification under Article 14, requiring that the classification be founded on an intelligible differentia and that the differential must have a rational relation to

---

[1] *Spice Jet v. Union of India and LG Electronic India Private Limited v. Union of India*, 2025 LiveLaw (Del) 1448
[2] An International Worker is an Indian employee working or going to work in a foreign country with which India has a Social Security Agreement (**SSA**) and an employee other than an Indian employee, holding a non-Indian passport, working for an establishment in India to which the Act applies.
[3] Notification No. GSR 706(E) dated October 1, 2008, available here.
[4] Notification No. GSR 148 dated September 3, 2010, available here.

the object sought to be achieved. It found merit in the respondents' argument that IWs constitute a distinct class from domestic employees. The classification was held to be reasonable, based on the principle of economic duress.

The key findings supporting this classification were:

- **Economic Duress:** Indian employees generally serve the Indian establishments until retirement, leading to a long duration of employment. Mandating contribution irrespective of salary would subject them to harsh economic duress throughout their long service period
- **Shorter Duration of Employment:** Foreign employees come to India for significantly shorter durations, typically 2 to 5 years. This short contributory period insulates them from any economic duress.
- **Rational Nexus:** The purpose of the Act is to provide social security. The classification based on the period of employment and associated economic duress has a rational basis.
- **International Obligations:** The insertion of Paragraph 83 helps implement India's international treaty obligations and provides a legal basis for entering into and applying SSAs.

The DHC acknowledged that the constitutional protection under Article 14 is available to 'any person,' including foreign nationals. However, it held that the classification resulting from Paragraph 83 was reasonable and did not violate the equality clause.

Regarding the challenge to the withdrawal age of 58 years, it observed that Paragraph 83 was added to implement India's international treaty obligations, and striking down such a provision would undermine the legal basis for SSAs. Consequently, the HC upheld the two notifications (of 2008 and 2010), the subsequent minor amending notifications, and the related circular letters and summons issued by the EPFO.

Comparison with Karnataka High Court Judgement

The petitioners in the HC relied upon the judgment of a learned Single Judge of the Karnataka High Court (**KHC**) in the *Stone Hill* case,[5] wherein Paragraph 83 of the Scheme was struck down as unconstitutional and arbitrary. The DHC, however, respectfully disagreed with the reasoning and conclusions drawn by the KHC.

The fundamental difference lies in the basis of classification considered by the two courts:

Aspect	DHC's Reasoning	KHC's Reasoning
Validity of Para 83	Upheld.	Struck Down as unconstitutional and arbitrary.
Basis of Classification	Classification is reasonable because Indian workers face long-term economic duress, which is absent for IWs due to their short, 2-5 year employment tenure.	The Act was intended for weaker sections/lower salary brackets (Rs. 15,000 cap). Applying the scheme to IWs drawing lakhs of rupees defeats the original object and is manifestly arbitrary.
Reciprocity Argument	The classification also serves to fulfill international treaty obligations.	The claim of reciprocity fails for IWs from non-SSA countries, as they cannot withdraw accumulations until age 58, unlike SSA workers.

[5] *Stone Hill Education Foundation v. Union of India* (2024) SCC Online Kar 49.

Views	KHC failed to consider the reasonability of the classification based on economic duress.	Held that the Scheme cannot travel beyond the scope of the Act, which mandates a ceiling for employees.

Comment

In view of the DHC's judgment differing the KHC's judgment of 2024, the matter will have to be resolved by the Supreme Court.

*****