

24.05.2017

From

To
Mr. Amit Singla,
Central Public Information Officer (RTI),
RPFC (Gr. II),
EPFO Head Office,
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Sub: Application under Sec. 6 of the RTI Act – Omission of various provisions of the EPF Act in the Draft Labour Code on Social Security & Welfare – information – requested.

Ref: 1. Letter No. Z-13025/ 13/ 2015 L.R Cell dated 12.03.2015 of the Ministry of Labour & Employment, Government of India, New Delhi.
2. Memo No. No. Z-13025/ 13 /2015-LRC dated 16.03.2017 of the MOL&E.

Sir,

1. The Ministry of Labour & Employment had reconstituted the “Group **responsible** for the Labour Code on Social Security & Welfare” two years ago, as could be seen from the Letter No. Z-13025/ 13/ 2015 L.R Cell dated 12.03.2015 of the MOL&E. This group, called as the Drafting Team, had been working **for the past two years** and has brought out the present ‘draft Labour Code’ which was put in public domain on 16.03.2017 by the MOL&E.

2. The draft Labour Code shows that drastic changes have been proposed and various beneficial provisions of the EPF Act have been diluted or dispensed with. Yet, no explanatory note has been added to the draft code wherever such omissions and commissions have been resorted to. People are, literally, challenged to find out those facts for themselves.

3. The procedure of drafting legislations require the rulers to entrust the Drafting Team with the 'legislative policy'. Mr. Justice. M. Jagannadha Rao, Chairman of the 17th Law Commission of India, has written a paper on Legislative Drafting. He says, **“The draftsman is not the author of the legislative policy, he merely tries to transform the legislative policy into words.** The legislative policy is made by the political executive which belongs to the political party which is ruling the legislature or by the monarch who reigns over the country. **The draftsman must, therefore, digest the legislative policy fully before he produces the instrument of legislation which can achieve the legislative purpose”.** The issue here, with the Labour Code, is why the Drafting Team does not make the concerned 'legislative policy' public.

4. Yet, surprisingly, the Drafting Team of the Labour Code is stated, by the Ministry of Labour, to have prepared the draft Labour Code on its own. The replies of the Ministry in their letters dated 12.03.2015, 25.04.2017 and 12.05.2017 imply that the officers of the MOL&E, Office of the CLC, the LW Office, the ESIC and the EPFO, were permitted to prepare the draft **as they pleased.** It is not known how their action was condoned by the MOL&E which goes ahead with the circulation of the draft Code.

5. The fact is that these five officers had taken undue liberty with the law of the land, and have made mincemeat of the time-tested provisions of law, **some** instances of which are enumerated below:

- i. It is surprising that the phrase 'not less favourable' appearing in Sec. 17 (1) (a), Sec. 17 (1) (b) & Sec. 17 (2), the phrase 'at par or more favourable' appearing in Sec. 17 (IC) and the phrase 'more favourable' appearing in Sec. 17 (2A) & (2B) in the EPF Act, 1952 dealing with exemptions, have been left out, in Sec. 94 in Part L of the draft Labour Code, deliberately, unlawfully and arbitrarily. The phrase 'similar or superior' appearing in the said Sec. 94 of the draft Labour Code dilutes the requirements of law and makes possible for the employers to get exemptions to the detriment of the employees.
- ii. It is also shocking to find the Sec. 1.8 in the Labour Code has been worded in such a manner that it can be so easily misused through undue influence resulting in the entire Labour Code being kept out of any and every factory and establishment. It is hard to believe that the five officers of the Drafting Team have been allowed free hand to go to any extent in reducing the social

security provisions to nothing. It is not clear whether the officers of the Drafting Team had any idea of the observation of the ILO in its 'World Social Security Report' released on 16.11.2010 that there were many "**informal labour practices**" in India and that the people of India are exposed to "**very high vulnerability**" to poverty.

- iii. What is even more shocking is the strange provisions in Sec. 90.1, Sec. 93.1 and 93.2 pertaining to fixing of responsibility on the private players who act in violation of the provisions of the Code. The disciplinary power is not vested in any civil servant but in the State Board and Central Board as a body. The decisions which are required to be, necessarily, executive in nature have been converted to become political decisions, through Sec. 90 and 93, providing gateway for the criminals to escape through political lobbying. **The intention to fix the wrong-doers in a right way is absent at the very drafting stage itself.**

6. In all probability, the officer sent from the EPF Organisation would have been given periodical briefing and he, in turn, would have submitted his notes to the EPF Hqrs. Office also periodically, as and when important provisions of the EPF Act were decided to be done away with. This officer would not have been authorized by the CPFC of the EPFO Hqrs. Office to play with the EPF Act as he pleased.

7. Having, thus, clarified the purpose and the importance of the issues involved I request you to kindly **supply the following information under Sec. 6 of the Right to Information Act, 2005:**

- a. Kindly supply the copy of the relevant document or communication through which the Hqrs. Office of the EPF Organisation had advised the officer (who had been deputed by it to be part of the Drafting Team) **to drop the phrases 'not less favourable', 'at par or more favourable' and 'more favourable'** appearing in the EPF Act while drafting the Labour Code.
- b. Kindly supply the copy of the relevant document or communication through which the Hqrs. Office of the EPF Organisation had advised the officer (who had been deputed by it to be part of the Drafting Team) to insert the Sec. 1.8 the way it appears the Labour Code.
- c. Kindly supply the copy of the relevant document or communication through which the Hqrs. Office of the EPF Organisation had advised the officer (who

had been deputed by it to be part of the Drafting Team) to insert **Sec. 90.1, Sec. 93.1 and Sec. 93.2** in the draft Labour Code, the way it appears in in it, so that the fixing responsibility on the private players / intermediate agencies, who act in violation of the provisions of the Code would have to decided only by the State Board and Central Board, as bodies.

8. I send herewith Postal Order for Rs. 10 (Rupees ten only) being the fee payable under the RTI Act drawn in favour of the Accounts Officer, EPFO, New Delhi.

Yours faithfully,

Encl: Postal Order.