

## **CHAPTER IV**

# **SOCIAL SECURITY ENFORCEMENT MACHINERIES: THEIR ROLE IN PROMOTION AND PROTECTION OF SOCIAL SECURITY SCHEMES**

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## **Social Security Scheme Enforcement Machineries: Their Role in Promotion and Protection of the Social Security Schemes**

The Success of any commercial organization depends upon the good management system, to regulate and measure the effectiveness of the work, and to attain the ultimate goal of that organization. In the same way the effective implementation of the social security depends upon the various enforcement machineries provided under the Social Security Schemes in the country. The machineries under various Social Security enactments, provided to eliminate all hindrances and difficulties faced by the employees during the process of claiming the benefits of the schemes. There are various independent mechanisms for enforcement and adjudication of any disputes arising out of the relevant schemes. These machineries includes, the ESI Court under the ESI Act, 1948, the Workmen's Compensation Commissioner under the WMC Act, 1923, the Provident Fund Commissioner under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, and the Controlling Authorities under the Payment of Gratuity Act, 1972 as well as the Maternity Benefit Act, 1961.

These enforcement machineries are different for their work functions, but their motto is to ensure effective implementation of the social security measures in relevant organization and to protect the interest of the employees from exploitation in the hand of employers. Machineries under the enactments have the powers like any other judicable authority or a civil court. But these cannot be called a Court. These are considered as a

forum or tribunal for the enforcement of social security schemes only. A brief detail of the enforcement machineries is given below.

#### **4.1 The Workmen's Compensation Commissioner Under the Workmen's Compensation Act, 1923**

The Chapter III contained in Section 19 to 33 of the Workmen's Compensation Act, 1923 deals with the provision of the Commissioners and its role in compensation claims. The State government has been authorized by the Act, to appoint any person as the Commissioner for the purposes of deciding the question of the liability of any person to pay compensation under the Act. The appointment must be notified in the Official Gazette, along with the jurisdiction of the said Commissioner. If more than one Commissioner have been appointed for the same area, the Government may by general or special order regulate the distribution of business between them. The Commissioner may take the assistance or the services of any person, who is expert in the matter referred to him for decision. Every Commissioner shall be deemed to be a public servant with in the meaning of this work under the Indian Penal Code. The decision of Commissioner is known as award. A Commissioner generally deals with and decides on the following questions.

- The liability of any person to pay compensation;
- Whether a person injured is or is not a workman within the meaning of this Act;
- The amount or duration of compensation, and
- The nature or extent of disablement.

According to Section 21 of the Act provides the jurisdiction limits to entertain the case from the effected parties incase of workmen's Compensation. It lays down that a Commissioner will deal fro the area in which the accident took place, which resulted in the injury to the workman or in case of his death, the dependents claiming the compensation ordinarily resides or the employer has his registered office. Any application shall be made to Commissioner in the form prescribed fees and particulars of the case, opposite parties, compensation claims, and details of complainant. The application may be sent to the Commissioner by registered post or may be presented to him or his office personally or through some one.

The Commissioner will give the notices of proceedings to all the parties for the disputes settlement. The principles of the Natural Justice, has to be followed while trail of the case for compensation. Appeal against the order of the Commissioner may be followed to the High Courts with in 02 months. If the dispute is settled before the Commissioner it takes the form of an award and enforceable in the Court of law. Further, where there is any agreement between the employer and the workman regarding claim of any compensation. It must be registered with the Commissioner. Such agreement shall be enforceable under this Act. Where Commissioner rejects the agreement for registration, he should give reasons for denial. The employer is liable to pay full amount of compensation to the workman on rejection of the registration of agreement and on case decided against the employer.

#### **4.1.1 Powers of the Commissioners**

The Commissioner shall have all the powers of the Civil Courts under the Code of Civil Procedure 1908, for the purpose of taking

evidence on oath, and of enforcing the attendance of witnesses and compelling the production of documents and material objects. The Commissioner shall be deemed to be Civil Court for all the purposes of Section 195 and 228 of the Chapter XXVI of the Code of Criminal Procedure, 1973.

**(a) Power to Impose penalty and interest:**

Where an employer contests his liability to pay compensation without depositing the amount of compensation, it is within the jurisdiction and competence of Commissioner, to impose penalty in terms of Section 4-A of the Act. The Punjab and Haryana High Court in **Beru Ram Vs Labour Officer acting as Commissioner, Sonapat, Haryana**<sup>305</sup> decided on the powers of the Commissioner. Where the employer did not pay the compensation in spite of notice being served, he has been held to be guilty of breach of the provisions of the WMC Act, and liable to pay interest @ 12 or at such rate not exceeding the maximum of the lending rates of any Scheduled Bank, as may be specified by the Central Government and penalty not exceeding 50% of the amount of compensation. Similar views have been expressed by the Gujarat High Court in **Vimela Ben Vs Gujarat Housing Board**<sup>306</sup> and by the Allahabad High Court in **Madan Mohan Verma Vs Mohan Lal**<sup>307</sup>.

However while imposing the penalty the Commissioner is required to issue a notice to the employer to show cause against the imposition of penalty in addition to or of interest inconformity with the principles on natural justice<sup>308</sup> as well as in accordance with the Clause (b) of Sub Clause (3) of Section 4-A as amended in 1995, by the Act No. 30 of 1995.

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<sup>305</sup> 1983, 1LLN, 671, P & H High Court

<sup>306</sup> 1975, ACJ, 84 GUJ

<sup>307</sup> 1982, F LR, 205, Guj

<sup>308</sup> Pratap Narain Singh Deo Vs Srinivas Sabats, 1976, AIR, SC 222.

**(b) Powers to requires further deposits in case of fatal accident:**

Section 22-A of the Act provides that where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the commissioner such sum is insufficient, he may by notice in writing stating the reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice. If the employer fails to show cause to the satisfaction of the commissioner, he may make an award determining the total amount payable and requiring the employer to deposit the deficiency.

**(c) Power to remit the cost:**

Section 26 of the Act provides that all costs incidental to any proceedings before a commissioner shall subject to the rules made under this Act be in the discretion of the Commissioner. If the Commissioner is satisfied that the applicant is unable by reason of poverty to pay the prescribed fees, he may remit any or all such fees. if the case is decided in favour of the applicant the prescribed fees, which he had not been remitted would have become due to be paid , may be added to the costs of the case and recovered in such manner as the Commissioner in his order regarding cost may direct.

**(d) Power to submit cases:**

Under the Section 27 of the Act, the Commissioner may submit any question of law for decision of the High Court. Bring the use of this provision, he may enable to avoid an appeal and consequent expenses to the parties.

**(e) Appeal against the order of the Commissioner:**

Section 30 of the Act provides that an appeal will lie to the High Court against the order of the Commissioner only when substantial



question of law is involved. An appeal should be accompanied with certificate issued by the Commissioner under the provision of the Act. The Supreme Court in **Chunni Lal Vs Century Spg Mfg Company Limited**<sup>309</sup> laid down some tests to determine whether a substantial question of law is involved in the appeal and held that even if anyone of them is satisfied the appeal would be entertained. The matters are whether directly or indirectly it affects substantial rights of the parties or question is of general public importance or whether it is an open question in the sense that issue is to be settled by pronouncement of the Supreme Court or Privy Council, or by the Federal Court or; the issue is not free from difficulty and it calls for a discussion for alternative view.

#### **4.1.2 The Legal Status of the Compensation Commissioners**

The Commissioners appointed under the Workmen's Compensation Act, 1923 has all backing of laws, but he cannot be called a Court. The matter of legal position has been decided by the various High Courts. Brief detail of the leading cases is given below.

A case of **Radran Vs Baby**<sup>310</sup> was decided by the Kerala High Court. The Court held that the Commissioner for workmen's compensation is outside the ordinary hierarchy of the Courts of the land discharging the State's judicial power. The Commissioner being not a court, his decisions involving a judicial element is quasi-judicial act, and the proceeding before him is only a quasi-judicial proceeding. The Evidence Act, 1872, which applies to judicial proceedings, is not, therefore attracted to distribution proceedings before the Commissioner.

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<sup>309</sup> AIR, 1962, SC, 1314

<sup>310</sup> 1979, FJR, 55 202, Kerala

**KG Alphonse Vs Xavier** <sup>311</sup> & **Bashir Khan Vs Ranger Vaniki and other** <sup>312</sup> were decided on the same matter. It was held that having regard to the provisions of the Chapter IV of the Constitution the commissioner under the WMC Act, 1923, is not a court and is not subordinate to High Court, and therefore, his order is revisable by the High Court under Section 115 of the Code of civil Procedure. The High Court of MP in **Yashwant Rao Vs Sampat** <sup>313</sup> held that the Commissioner acting under the WMC Act, 1923, is a tribunal not a civil court. He constitutes an independent tribunal. His function is to judge and decide not merely enquire and advise and in judging and determining the matters before him, he has to proceed judiciously and not arbitrarily.

#### **4.1.3 Jurisdiction of the Civil Court Barred: Under the Scheme**

No civil court shall have jurisdiction to settle, decide, or deal with any question, which is by or under this Act required to be settled, decided or dealt with by a Commissioner. Further the civil court has no jurisdiction to enforce any liability incurred under the WMC Act<sup>314</sup>. The Supreme Court in **Kamala Mills Limited Vs State**<sup>315</sup> observed that in cases where the exclusion of Civil Courts jurisdiction is expressly provided for the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it, may be relevant but cannot be decisive. If it appears that a statute creates a special right or liability to be dealt with by tribunals specially constituted in that behalf and it further lays down that all questions about the said right and the tribunals shall determine liability so constituted. It becomes pertinent to

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<sup>311</sup> 1981, FJR 281, Kerela

<sup>312</sup> 1994, Lab IC 240, Bom

<sup>313</sup> AIR, 1979 21, MP

<sup>314</sup> Section 19(2) of the Act

<sup>315</sup> AIR, 1965, 194, SC

enquire whether the said statute prescribes remedies normally associated with actions in civil courts or not.

## **4.2 The Employees State Insurance Court under the employees State Insurance Act, 1948**

The ESI Court shall be constituted by the State by issuing a Notification in the Official Gazette. The local area within which the court shall, exercise its jurisdiction will be specified in the notification. The State Government, as shall constitute the court shall determine the number of Judges. A judicial officer or a Legal Practitioner of 5 years standing is qualified for the appointment as Judge of the ESI Court. The State Government may appoint the same court for two or more local areas, or two or more courts for the same local area. The State Government assigns the distribution of work, for Courts<sup>316</sup>.

### **4.2.1 Jurisdiction of the ESI Court:**<sup>317</sup>

Any question or dispute subject to the provisions of Sub Section (2-A) relating to the matters as mentioned below shall be decided by the ESI Court.

- Whether any person is an employee or is liable to pay employee's contribution, or
- The rate of wages or average daily wages for the purpose of this Act, or

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<sup>316</sup> Section 74 of the ESI Act, 1948

<sup>317</sup> Ibid, Section 75

- The rate of contribution payable by the principal employer in respect of any employees, or
- The person who is or was the principal employer in respect of any employee, or
- The right of any person to any benefit and the amount and duration of that benefit, or
- The direction issued by the Corporation under Section 55-A on review of any payment of dependent's benefit, or
- Any other matter, which is in dispute, among Corporation, employer, employee, principal employer, immediate employer.

The Jurisdiction of the ESI Court covers the subject matters of claims relating to the ESI Act, 1948. The claims includes, recovery of the contributions from and by the principal employer; claims against a principal employer under Section 68 of the Act; claims under Section 70 of the Act and for the recovery of any benefits admissible under the Act. The Court has jurisdiction to decide the benefit to which a disabled employee is entitled. It is also competent to decide the duration of such benefit. The determination of claim under the Section 75(1) (g) by the ESI Court is a condition precedent for issuing certificate to collector for recovery of arrears of employee's contribution.

#### **4.2.2 Procedure of Benefit claim:**

Any proceeding before an ESI Court shall be commenced by an application from the affected party. Every such application shall be made within 03 years from the date on which the cause of action arose. The State Government in consultation with the Corporation shall prescribe the form of application, if any and particulars required to be

furnished with the application. Some other person may deposit the application to the Court personally or on behalf of individual. All the application should be supported with documentary evidence if any and contains relevant details of the dispute. The Court registers the dispute and summons all parties to the dispute for hearing. All the proceedings are conducted according to the principle of Natural Justice. Further a legal practioner, or an officer of a registered trade union authorized in writing or with the permission of the Court or any other person so authorized is allowed to make an application, appear, or act on behalf of any person before the Court.

The ESI Court posses all the power of a civil court for the purposes of summoning and enforcing the attendance of witness; compelling and discovery and production of documents and materials and objects; and administering oath and recording evidence. The ESI Court constituted under the provisions of Section 74 of the Act shall be deemed to be a Civil Court within the meaning of Section 195and 228 of the Chapter XXVI of the Code of Criminal procedure. The judges employed in the court are public servant.

### **4.2.3 Jurisdiction of the Civil Court is barred:**

Section 75(3) of the ESI Act imposes express and complete ban of jurisdiction of a Civil Court in such matters. The ESI Act create a special right or a liability and further lays down that question about the said right and liability shall be determined by the ESI Court constituted under the Section 74 of the Act. The ESI Court has exclusive jurisdiction to determine the dispute and claim relating to the Act. The Punjab and Haryana High Court in the **ESIC Vs Jalandhar**

**Gymkhana club** <sup>318</sup> held that the dispute between employers and employees have to be decided by the ESI Court and civil courts will have no jurisdiction to decide such disputes relating to the matters under ESI act. The Gujarat High Court in **ESIC Vs Hanumatram Ramdas** <sup>319</sup> have also decided that Section 75(3) of the Act, bars the jurisdiction of a civil court to deal with any matter which is to be decided by the ESI Court. The arrangement of Section 74 and 75 clearly shows that the ESI Court is to be established first and the jurisdiction of the civil court is ousted in consequence of the existence of the Court. The Delhi High Court in **Ram Prashad Vs ESIC** <sup>320</sup>, the Karnataka High Court in **ESIC Vs Nirmala Chemical Industries** <sup>321</sup> and the Calcutta High Court in **ESIC Vs Hari Hazara** <sup>322</sup> held the similar views regarding the bars on the jurisdiction of the Civil Courts in matters related to the ESI Act, 1948. The Supreme Court in **ESIC Vs Narayan Chandra Rajkhowa and others** <sup>323</sup> held that the ESI Court has jurisdiction to decide whether benefits available of by employees prior to ESI Scheme, were more advantageous than those under the ESI Scheme especially because the jurisdiction of the civil court has been barred under Section 75(3) of the ESI Act.

#### 4.2.4 The Legal Status of the ESI Court

The position of the ESI Court is that of a domestic tribunal. The court has to decide the questions in regard to entitlement of disablement benefit and the claims for recovery of benefit and while deciding the, the Court acts in the capacity of exercising original

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<sup>318</sup> 1992, LLR, 733, Punjab and Haryana High Court

<sup>319</sup> 1970, Lab IC 240, Guj

<sup>320</sup> 1988, 2CLR, 446, Delhi

<sup>321</sup> 1993, LLR, 941, Ktk

<sup>322</sup> 1989, 2LLJ, 415, Cal

<sup>323</sup> 1998, 1LLJ, 678, SC

jurisdiction and as a court of appeal or a civil court reviewing a decision of domestic tribunal. The Punjab High Court in **R D ESIC Vs Ramlakhan Pandey**<sup>324</sup> held that the ESI Court itself a domestic tribunal specially constituted for the purpose of deciding any controversy that may arise on the matter enumerated in Section 75 of the ESI Act, 1948.

### **4.3 The Provident Fund Commissioners under the Employees Provident Fund and Miscellaneous Provisions Act, 1952**

The Central government shall appoint a Central Provident Fund Commissioner who shall be the Chief Executive Officer of the Central Board and shall be subject to the general control and superintendence of that Board. The Central Board may appoint, as many as Additional Central PF Commissioner, Deputy, Regional, and Assistance Commissioners and other such officers as it may consider necessary for the efficient administration of the scheme.

#### **4.3.1 Jurisdiction of the Provident Fund Commissioners:**

According to Section 7-A of the Act, the Commissioner appointed under the Section 5 of the Act has the jurisdiction to deal with the following matters related to the Employees Provident Fund and Miscellaneous Provisions Act, 1952:

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<sup>324</sup> 1960, AIR, 559, Punjab

- Disputes arises regarding applicability of this Act, to an establishment,
- Determine the amount due from any employer under any provisions of the Act, the scheme, or the Pension scheme or the Insurance scheme, as the case may, and
- To hold enquiry for the above said purposes.

The MP High Court in **Younis Mohammed Vs RPFC**<sup>325</sup> held that the powers of the RPF Commissioner under Section 7-A of the Act appear to be very wide; where a liability is disputed determination of the liability is a condition precedent, for serving a demand on the employer. When the liability is disputed on the ground that establishment is not covered under the Act, the RPFC has to make an enquiry and determine if the Act is applicable to the establishment under the circumstances of that case. He may conduct such enquiry as may be deemed necessary. Under Sub Section (2) of the Section 7-A, the powers of officer conducting an enquiry are defined. Under Sub Section (3) of the Section 7-A of the Act, a reasonable opportunity is to be given to the employer for his representation in that enquiry. An employer does not preclude the competent authority under Section 7-A of the Act from making its own estimates of the amount payable before issuing the notice in terms of Sub Section (3).

The Commissioner conducting any enquiry for purpose under Section 7-A, shall have the same powers as are vested in a Court under the Code of Civil Procedure for trying a suit, in the matters of enforcing the attendance of any person or examining him on oath, requiring the discovery and production of documents, receiving

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<sup>325</sup> 1987, Lab IC, 1089, MP



evidence on affidavit and issuing commissions for the examination of witness. Any such enquiry shall be deemed to be judicial proceeding within the meaning of Section 193 and 228 of the CPC and for the purpose of Section 196 of the IPC.

The Supreme Court in **Food Corporation of India s RPFC and others**<sup>326</sup> held that the RPFC has the same powers while exercising jurisdiction under Section 7-A of the Act, which are vested in a Civil Court in trying a suit. The Court further held that no order should be made under the Sub Section (1) of Section 7-A, unless the employer concerned is given reasonable opportunity of representing his case. The Bombay High Court in **Damji Bhai L Shah Vs RPFC and another**<sup>327</sup> decided that before passing the order under Section 7-A, the Commissioner has to give reasonable opportunity. Issue of show cause notice contain conclusion without giving documents of evidence on the basis of which the conclusion is arrived would not amount to giving reasonable opportunity because it would prejudicially affect the right of the party to defend. The similar view was held by the MP High Court in **Gunvantrai Vs RPFC**<sup>328</sup>

#### **4.3.2 Review of orders of the Provident Fund Commissioners:**

Any person aggrieved by an order made under Sub-Section (1) of the Section 7-A, but from which no appeal has been preferred under the Act and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not produced by him at the time when the order was made on

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<sup>326</sup> 1990,LLR, 64, SC

<sup>327</sup> 1992,1LLJ, 244, Bom

<sup>328</sup> 1990,AIR, 221,MP

account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order where an order determines the amount due from an employer under Section 7A has been passed, then the officer within a period of 5 years from the date of the communication orders under Section 7A or 7B of the Act, reopens the case and passes appropriate order determining the amount due from the employer in accordance with the provisions of this Act. The provision of review of orders passed under Section 7A, and Section 7B of the Act.

### **4.3.3 Recovery of money due from employers and contractors:**

Recovery may be made from the employer in relation to an establishment to which any scheme applies of any amount lying in arrear in respect of any contribution payable to fund and accumulations any PF standing to the credit of the employees who become members of Fund. It also includes the accumulated amount to the credit of an employee exempted under Section 17(1), (1-A) and 17(2) of the Act. Damages are recoverable under Section 14B (for default in payment of any contribution to Fund) and any other charges payable by the employer under any other provisions of the Act.

The PF Commissioner, who issued a recovery certificate with details of the amount and the particulars of the employer, processes the collection of any arrear. The recovery certificate is sent to the District Collector, in which the employer resides or the place where his office is situated. The recovery is done through the process of land revenue collection. The collection may take necessary action to recover the

amount; the property movable or immovable may be attached in order to recover the amount from the employer.

The Supreme Court in **Organo chemical Industries Vs Union of India**<sup>329</sup> decided on the Section 14-B on levying damages. Where the order in the matter levied damages in three separate sums having regard to the periods in which three deposits of the contributions had been made. It was held by the Supreme Court that the RPFC had not only to apply his mind to the requirements of the Section 14-B of the Act, but was cast with the duty of making a speaking order after conforming to the rules of natural justice. The word damages in Section 14-B in the context in which it appeared, meant, penal damages. The imposition under Section 14 –B served for told purpose. It resulted in demagnification and also served as a deterrent. It was merely to provide compensation for the employees. It was also meant to penalize the defaulting employer. The Supreme Court in another Case<sup>330</sup> held that when an authority normally performing executive or administrative functions exercises judicial power, he must disclose the reasons in support of the order. In this case the Commissioner did not disclose the reasons as what and how he came to that conclusion. In the opinion of the Court this is a manifest error of law on the part of the PF Commissioner, so his order cannot be sustained.

In 1988 Second proviso has been inserted to the effect that Central Board may reduce or waive the damages levied under the Section 14-B of the Act, in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under Section 4 of the Sick Industrial Companies (Special Provisions) Act 1986, subject to such terms and conditions as may be specified in the scheme.

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<sup>329</sup> 1979, AIR, 1803, SC

<sup>330</sup> Travancore Rayons Limited Vs Union of India, 1971, AIR 862, SC

#### **4.3.4. The Employee Provident Fund Appellate Tribunal:**

The Central Government may by Notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the EPF Appellate Tribunal, to exercise the powers and discharge the functions conferred on such Tribunal by this Act. Every such Tribunal shall have the jurisdiction in respect of establishment situated in such area, as may be specified in the notification constituting the Tribunal the Section 7D to 7Q of the Act deals with the provisions of the Appellate Tribunal. The Tribunal shall consist of one person called Presiding Officer of the Tribunal. The Presiding Officer must be, has been, or is qualified to be a Judge of a High Court or, a District Judge. The Presiding Officer of the tribunal shall hold the office, for 05 years or up to the age of 62 years, whichever is earlier. The Presiding Officer may resign or removed according the provision of the Act. The Central Government also appoints other supporting staff in the Tribunal.

##### **4.3.4.1 Jurisdiction of the Appellate Tribunal:**

The Tribunal shall have the jurisdiction as per Section 7-I of the Act. Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority under the proviso to Sub-Section (3) or Sub-section (4) or Section 1 or Section 3 or, Sub-Section (1) of Section 7-A, or Section 7-B (except an order rejecting an application for review referred to in Sub-Section (5) there of) or Section 7-C or Section 14-B of the Act. Every appeal under this Act hall be filed in such form and manner with in such time and be accompanied by such fees, as may be prescribed.

A Tribunal shall entertain no appeal by the employer unless the 75% of the amount due is deposited. The Tribunal follow the principles of natural justice in its proceeding. It also may at any time, with in 5 years review its order. A Tribunal shall send a copy of every order passed under this Section to the parties to the appeal. An order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law. Section 7-N of the Act, lays down that no act or proceeding before Tribunal, shall not be questioned on the ground of any defect in the constitution of such Tribunal.

## **4.4 The Controlling Authorities**

### **4.4.1 The Controlling Authority under the Payment of Gratuity Act, 1972:**

Section 3 of the Payment of Gratuity Act provides that the appropriate government may by notification; appoint any officer to be a Controlling Authority, who shall be responsible for the administration of this Act. Different Controlling Authorities may be appointed for different areas.

#### **4.4.1.1 Jurisdiction of the Controlling Authority:**

The Controlling Authority is the Officer responsible for the administration of the Payment of Gratuity Act. It has the jurisdiction to deal with the matters like applicability of the act to factory, shops or other commercial establishments, determination of the amount due from the employer and imposing penalties like interest or fines. Section 7,8, and 9 of the Act provides the jurisdiction of the Controlling Officer or Authority.

#### **4.4.1.2      Determination of the amount of Gratuity<sup>331</sup>:**

The employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable. If the employer does not pay the amount of gratuity payable, within 30 days then simple interest at such rate, not exceeding the rate notified by the Central government from time to time for repayment of long-term deposits. Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and employer has obtained permission in writing from the Controlling Authority for the levied payment on this ground. If there is any dispute as to the amount of gratuity payable to an employee under this Act, or as to the admissibility of any claim of, or in relation to an employer payment of gratuity or, as to the person entitled to receive the gratuity. The employer shall deposit with the Controlling Authority such amounts as he admits to payable by him as gratuity. Where there is a dispute with regard to any matter or matters the employees or employer or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute.

The Controlling Authority shall after due enquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matters of, in dispute and if, as a result of such enquiry any amount is found to be payable to the employer, the Controlling Authority shall direct the employer to pay such amount as the case may be such amount as reduced by the amount already deposited by the employer. The Controlling Authority shall pay the amount deposited including the excess amount, if any deposited by the employer to the person entitled thereto.

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<sup>331</sup> Section 7 of the Act

The Rajasthan High Court in **Mandar Union Sanatorium and Hospital Vs MB Sathe and other**<sup>332</sup> held that the word determination in Section 7 of the Act includes the determination of the liability and while determining the liability authority can say that there exists no liability. As far for the payment of interest for delayed payment of gratuity is concerned the Court held that there is no provision prohibiting the payment of interest by way of compensation and the Court has inherent power to grant relief. The payment of the interest was ordered to be paid not as interest, but by way of compensation for delayed payment of gratuity. Even the Supreme Court has held that when there is no prohibition then the Court has inherent power to compensate the deserving person for the loss, which has been caused to them. Section 4, and Section 7 of the Act, in so far as they relate to minority institution run for philanthropic purposes are valid and legal.

The Amendment Act No.22 of 1987 added the provision of payment of interest in case of delay of the payment of the gratuity, and the Sub-Section (3-A) in Section 7 was inserted<sup>333</sup> for the said purpose.

#### **4.4.1.3 Recovery of the Payment of Gratuity**

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled there to the Controlling Authority shall on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount of the District Collector, who shall recover the same, together with compound interest as specified after expiry of the stipulated period, and as arrears of land revenue and the pay the same to the person entitled. The Controlling

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<sup>332</sup> 1986,2LLJ, 135, Raj

<sup>333</sup> With effect from 01.10.1987

Authority shall before issuing a certificate under the provision, give the employer a reasonable opportunity of show cause against the issue of such certificate. The amount of interest payable under the Act should not exceed the amount of gratuity payable under the Act.

The Patna High Court in **Chanparan Sugar Company Limited Vs The Joint Labour Commissioner and the Appellate**<sup>334</sup> held that by virtue of provisions of Section 8 of the Act, payment of interest on gratuity amount is the mandate of law itself and is not dependent on an expressed claim by the employee thereof. The right to interest accrues to the employee from the failure of the employer to perform his statutory duty to tender and pay gratuity and not from any formal demand thereof by the employee. Similarly the liability to pay interest does not start from the certificate of the Controlling Authority, but from the default in the performance of his duty. The Supreme Court in **Charan Singh Vs Birla Textile**<sup>335</sup> held that it is only, when the Collector issues a certificate for recovery of the due, as a public demand that interest as provided under Section 8 is admissible.

#### **4.4.1.4 Powers of the Controlling Authority**

For the purpose of conducting an enquiry under Sub-Section 4 of the Section 7 of the Act, the Controlling Authority shall have the same powers as are vested in Civil court while trying a suit, under the CPC 1908, in respect of, enforcing the attendance of any person or examining them on oath, requiring the discovery and production of documents, receiving the evidence on affidavit and issue of commission for the examination of witness. Any enquiry under this Section shall be judicial

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<sup>334</sup> 1987,FLR, 54, 50, Patna

<sup>335</sup> 1988, AIR, 2022, SC



proceeding within the meaning of Section 193 and 228 and for this purpose of Section 196 of the IPC (45 of 1860).

The Allahabad High Court in **Asha Devi Jauhan Vs Sharda Devi**<sup>336</sup> held that the Controlling Authority had no power to decide a dispute in case of rival claimants for gratuity. Once a dispute exists in regard to the rights of the rival claimants, the Controlling Authority cannot adjudicate upon such dispute. The Civil Court had jurisdiction to go into the disputed matter.

**(a) Power of imposing Penalty**<sup>337</sup>

Whoever for the purpose of avoiding any payment to be made by himself under this Act or of enabling any other person to avoid, such payment knowingly makes or causes to make any false statement or false representative shall be punishable with imprisonment for a term, which may extend to 06 months, or with fines, which may extend to ten thousand or with both. An employer who contravenes or makes default in complying with any of the provision of this Act shall be punishable with imprisonment for a term not less than 3 months extendable to one year and fine with ten thousand extendable to twenty thousand or with both. Where the offence relates to nonpayment of gratuity under the Act, the punishment shall be imprisonment not less than 6 months extendable to 2 years.

#### **4.4.1.5 Appeal against the orders of the Controlling Authority**

Any person aggrieved by an order of the Controlling Authority may within 60 days from the date of the receipt of order, prefer an appeal

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<sup>336</sup> 1987, 2LLJ, 345, All

<sup>337</sup> Section 9 of the Act

to appropriate appellate authority. The period of the appeal may be extended beyond 60 days. No appeal by an employer shall be admitted unless at the time preferring appeal, the appellants either produces a certificate of the Controlling Authority to the effect that the appellant has deposited with him the amount equal to the amount of gratuity required to be deposited or deposits with the appellate authority such amount.

#### **4.4.2 The Controlling Authority under the Maternity Benefit Act, 1961:**

The Central Government is responsible for administration of the provisions of the Act in mines and the circus industry, while the State Governments are responsible for administration of the Act in factories, plantation, and other establishments. So far as the Coal Mines are concerned the Coal Mines Welfare Commissioner is responsible for the administration of the Act. The Director General of Mines Safety administers the Act in mines and other coalmines. Rules framed under the State and Central enactments requires employers to furnish the administrative authorities annual return showing the number of women workers covered, number of claims made, amount paid during the year.

The Appropriate government may by notification in the Official Gazette appoint such Offices as it thinks fit to be inspectors for the purposes of this Act may define the local limits of the jurisdiction<sup>338</sup>. Every inspectors appointed under this Act shall be deemed to be a public servant with in the meaning of Section 21 of the IPC. An inspector can direct certain payment to be made to a woman under this Act. Any woman claiming that maternity benefit or any other amount to which she is entitled under this Act, and any person claiming payment due under the

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<sup>338</sup> Section 14 of the Act

Section 7 of the Act, had been improperly withheld may make a complaint to the inspector. Sub-Section (2) of the Section 7, provides that the inspector may at his own motion or on the receipt of a complaint make an enquiry or cause an enquiry to be made and if satisfied that the payment has been wrongly withheld, may direct the payment to be made in accordance with his orders.

Any person aggrieved by the decisions of the inspector, may appeal to the prescribed authority. The appeal shall be preferred within 30 days from the date of communication of orders to such person. The decision of the appellate authority shall be final, where no appeal from the decision of inspector is made, his decision shall be final. Any amount payable in pursuance of the decision of the inspector or the appellate authority under Section 17 of the Act shall be recovered as are ear of land revenue. A penalty under Section 2 for contravention is 3 months imprisonments or fine with Rs. 500 or both and fine in case of the maternity benefits not paid to the eligible woman.