



EMPLOYEES' OLD AGE BENEFITS INSTITUTION

OFFICE OF THE DIRECTOR GENERAL (OPERATIONS)

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433

Circular No. 03 / 2017-18

[Guideline on Concessionary Clause u/s 22(2)]

1) **Preamble**

The prime responsibility of every officer of the institution is to act as a "Trustee" of the "EOB Fund" with the responsibility to ensure that all benefits are paid out of the fund in a uniform and judicious manner in accordance with the requirements of EOB Act 1976, Rules & Regulations made there-under as well as other statutes and canons of law. There is no room for disbursement of benefits on the basis of past liberal practices based on element of sympathy, divorced from legal dictums.

The EOB fund is fast depleting due to legal lacunas, post devolution litigations and increasing liability of enhanced benefits. The last actuarial evaluation of the fund upto 30.06.2012 carried out in 2015 has revealed that the EOB fund shall start depleting in 2023 and be exhausted in 2027. It is therefore, incumbent every officer of the institution weather they work in the Operations, Adjudication, IT, Law, Finance etc. to ensure sustainability of the fund on long term basis to avoid any situation of chaos and uncertainty arising from possible depletion of the fund.

This Circular on Guideline on Concessionary Clause u/s 22(2) should be understood in the above prospective. It shall therefore be incumbent upon every officer of the Institution to implement this Circular in the letter in spirit.

2) **Guideline on Concessionary Clause u/s 22(2)**

The concessionary clause u/s 22(2) of EOB Act 1976 has been widely misinterpreted to extend the scope of this scheme to all the insured person who are otherwise not eligible to Old-Age pension due to having less than 15 years of insurable employment in violation of the spirit of Section 1 & Section 22. The relevant sections are reproduced and elaborated as under;

Section 1

Section 1 subsection (4) makes the act applicable to the following establishments / industry;

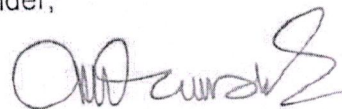
- (i) Those with 5 or more employees [It was 10 in 1976, then increased to 20 in 2006 and then reduced to 5 in 2008]
- (ii) Those with lesser employees then specified in (i) above but who apply for registration voluntarily.
- (iii) Those whom the Federal Government may notify from time to time.
- (iv) By virtue of above, the applicability of the act shall extend as under;
 - (i) Any industry or establishments with 10 or more employees as on 01.07.1976.
 - (ii) Any industry or establishment with less than above specified threshold but who applies voluntarily from the date of such voluntarily registration.
 - (iii) Any establishment or industry which may not be covered by (i) & (ii) above but has been duly notified by the Federal Government from date of such notification
 - (iv) In case, where any establishment or industry otherwise exempted u/s. 47 is taken out of the purview of exemption through amendment to law, the EOB Act shall become applicable to such class of establishments from the date of such amendment.

Section 22

"If an insured person was on the **first day of July, 1976**, or is on any day thereafter on which this Act becomes applicable to an industry or establishment,-

- (i) **over forty years of age, or thirty-five years in the case of a woman, clause (b) of sub-section (1) shall have effect as if for the word "seven" were substituted : or**
- (ii) **over forty-five years of age or forty years in case of a woman, clause (b) of sub-section (1) shall have effect as if for the word "fifteen" therein the word "five" were substituted."**

Original Text of Section 22(2) was part of EOB Act, 1976 as "Old-Age Allowance" which was subsequently amended through EOB (Amendment) Ordinance, 1983. The provision prior to amendment is reproduced as under;



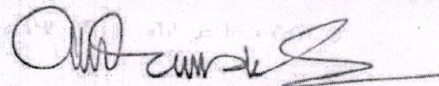
"If, on the 1st day of July 1976, an insured person is over forty years of age, over thirty five in case of women, clause (c) of subsection (1) shall have effect as if for the word "fifteen" therein, the word "seven" were substituted".

The amendment in the said section by addition of the phrase *"on any day thereafter on which this Act becomes applicable to an industry or establishment"* in section 22(2) was given to benefit employees of any establishment or industry to which the Act was made applicable as per circumstances specified Section 1 of EOB Act. Hence, only those employees of an establishment or industry (to which the act is made applicable, as specified will get benefit of Section 22(2), with the restriction that only such employees will get concession who were in the employment of the said establishment or industry at the time of applicability of the Act. Any employee joining after the cut-off date of 01.07.1976 or as specified in column (ii), (iii) & (iv) above will not get such concessionary benefit.

Applicability of the Act to the "Insured Persons" should not be seen in isolation of the applicability to the "establishment or industry" as on 01.07.1976, and thereafter, as specified above. An establishment or industry that came into existence after 01.07.1976 or those which existed on such date but got registered at any later date shall be excluded from this concession.

Any wage related inclusion of Insured persons in the scheme or coverage of professional / technical employees is related to coverage of such employees only. Therefore, such employees shall also not be eligible to claim benefit of reduced insurable employment under this clause.

The applicability of the Act to an establishment or industry is often misunderstood with reference to PR-01 form in which Date of Registration and Date of Applicability are misconstrued to pass benefit of concessionary clause. Say, if an establishment is registered on 01.07.1985 and its date of applicability is made from 01.07.1982, it shall mean that the establishment has to pay arrears from 01.07.1982 and this date for all practical purpose be considered date of "Applicability of the Act" for the establishment. The notified form and certificate of registration, PR-02 Form under EOB Registration of Employee and Insured Person Rules, 1976 do not mention any date of "Applicability of the Act", as such. Therefore, date of registration or retrospective applicability shall be treated as date of "Applicability" of the act.



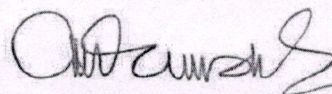
Further, confusion in the concessionary scope is created due to inclusion of proviso to Section 22(2) which reads as under;

"Provided that nothing in this section shall apply to an employee insured under this Act on or after 1st day of July, 2008."

In order to properly understand this proviso, it is important to understand some basic concepts of jurisprudence. The main section of any law specifies some provisions which may be restricted or limited through any proviso to the extent provided in such proviso. Had this proviso not been included in the law, all the employees of any establishment or industry with (5) or more employees would have come within the ambit of law as on 01.07.2008 and all the employees of such an establishment or industry would have become eligible to get benefit of reduced insurable employment as provided under section 22(1)(i)&(ii). However, the law makers realizing that the scheme was fairly old enough, made a specific exclusion of this concessionary clause due to reduction in applicability threshold to 5 under the Act from 01.07.2008. Therefore, this proviso is only applicable to restrict benefit to those falling in the applicability of the act as IPs as on 01.07.2008 and thereafter. This proviso may not be claimed to rescue those who are otherwise made ineligible for the benefit prior to 01.07.2008. This explanation shall ipso facto apply to employees of banking companies who were excluded from the exemption provided u/s. 47 through Finance Act, 2008 effective 01.07.2008.

The main confusion in grant of concessionary benefit of 5/7 years of insurable employment is due to the addition of the words "**1st day of July, 1976 or any day thereafter, on which this act become applicable**" (emphasis on thereafter). The provision for future concession was only provided due to any further possible changes in the applicability of the Act as per conditions specified in Section 1(4).

In the legislative history of the Act, the applicability was changed twice. Firstly, in 2006, when the applicability was restricted to the establishments with 20 or more employees. After this amendment, no new class of establishments was added to the scheme, therefore, the word "thereafter" remained in-applicable / redundant. Secondly, in 2008 the applicability was extended to establishments with 5 or more employees. At this time, the law makes considering the scheme remaining in vogue for over 40 years and realizing that the concession was no more required (as was the case on 01.07/1976) done alongwith such concession.



It will be better to explain that this concession was provided to those IPs above 40/45 years in age (35/40 for women) who could not practically attain 15 years of insurable employment by virtue of their being higher age and resulting physical handicap. Hence, had this concession not been provided in 1976, they would have remained excluded from the benefits of this scheme. Therefore, the amendment of July, 2008 specifically provided that the concession of Section 22(2) shall not apply to insured persons registered on or after 1st day of July, 2008. Therefore, the scope of concession clause was originally meant and shall always remain restricted to the following cases only;

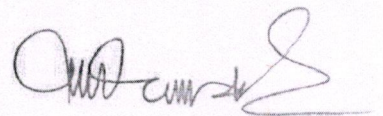
- (i) IPs of Establishments that came in the ambit of the scheme on 01.07.1976 (Date specific). Age of IPs for the concession to be reckoned from 01.07.1976.
- (ii) IPs in establishments that came within the ambit of law (date specific) by virtue of joining the scheme voluntarily, Government Notification, exclusion from exemption u/s.47 or attaining the applicability threshold prescribed by law on or before 30.06.2008

It has been observed that in order to gauge the age at which insured person joined the scheme is calculated by subtracting date of initial joining of the insured person from his date of birth. If the age of joining the scheme is between 45/50 years for men & 40/45 for women, concession of reduced insurable employment of 5/7 years is invariably extended in utter disregard of the fact as to whether the insured person was in employment of such establishment at the time of applicability of the scheme to such establishment (detailed deliberations already made above).

Henceforth, in order to determine the entitlement to concessionary clause, it must be verified that the date of applicability of the scheme to the establishment and the date of joining of the employee is same. To determine eligibility for concessionary clause, following short formula shall be used;

Age at the time of Joining Scheme = [Date of Joining, if same as the date of applicability of the Act the establishment] – Date of Birth

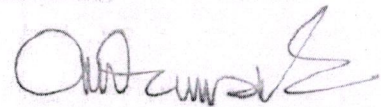
For convenience example is given as under;



Say if, the date of Applicability to any establishment is 01/10/1995 & Insured Persons' date of first Joining the scheme is also 01/10/1995 with the same employer and his/her age is greater than 45/40 years, then concession in insurable employment may be allowed. If his/her date of joining is any date after the date of applicability to the establishment then his/her age shall not be calculated for any concession. In other words, age bracket shall only be checked for those insured persons whose date of joining is same as that of the date of applicability of the scheme to the establishment. Any age calculation in isolation of the date of applicability of the establishment shall be an illegal extension of law & unwarranted under the EOB Act 1976.

This Circular shall override any of the previous Circulars / instructions on the subject to the extent of inconsistency. All pending pension claim as on the date of this Circular shall be processed under this Circular.

This Circular is being issued with the approval of Chairman, EOBI.



(Abdul Wahid Uqaily)
Director General (Operations)