Industrial Laws PYQ 2020

Q. 1 Differentiate between 'Employees Provident Fund Scheme' and 'Employees Pension Scheme' under the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

Ans 1. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a social security legislation that provides for the establishment of a Provident Fund (PF), Pension Fund (PF) and Insurance Fund (IF) for employees in India. The two main schemes under the act are the Employees' Provident Fund Scheme (EPF) and Employees' Pension Scheme (EPS).

The main differences between the two schemes are as follows:

1. Purpose: The EPF scheme is primarily designed to provide a retirement corpus to employees, while the EPS scheme provides a pension to employees after their retirement.

2. Contribution: Both the employee and employer contribute to the EPF scheme, with the employer's contribution being 12% of the employee's basic salary and the employee contributing 12% of their basic salary. In the EPS scheme, only the employer contributes 8.33% of the employee's basic salary towards the pension scheme.

3. Eligibility: All employees who earn a basic salary of up to Rs. 15,000 per month are eligible to become members of the EPF scheme, while only those employees who have completed 10 years of service are eligible to become members of the EPS scheme.

4. Benefit: Under the EPF scheme, the employee receives the entire accumulated balance in their PF account, including both the employer's and employee's contribution and interest, upon retirement. In the EPS scheme, the employee receives a pension based on the length of their service and the amount of contribution made by the employer.

5. Withdrawal: An employee can withdraw the entire balance in their EPF account after completing a minimum of 5 years of service. In the EPS scheme, the employee can receive a monthly pension after completing 10 years of service or opt for a lump sum withdrawal of the entire accumulated pension amount.

In summary, the EPF scheme provides a retirement corpus to employees, while the EPS scheme provides a pension to employees after their retirement. Both schemes have different contribution, eligibility, benefit, and withdrawal criteria.

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Q.2 Differentiate between permanent partial disablement and permanent total disablement under Employees State Insurance Act, 1948.

Ans2 Under the Employees State Insurance Act, 1948, permanent partial disablement and permanent total disablement are two types of disabilities that are covered for compensation.

Permanent partial disablement (PPD) refers to a disablement of a permanent nature, but which only partially reduces the earning capacity of the insured employee. In other words, the employee is able to perform some work, but not at the same level as before the disablement. For instance, if a worker

loses a finger in an accident, but is able to continue working, albeit at a reduced efficiency, it would be considered as permanent partial disablement.

On the other hand, permanent total disablement (PTD) refers to a disablement that renders the insured employee permanently incapable of performing any work. In this case, the employee is completely and permanently incapacitated, and is unable to earn any income. Examples of PTD could include the loss of both arms, both legs, or total blindness.

Under the Employees State Insurance Act, 1948, both PPD and PTD are eligible for compensation. However, the compensation amount may differ based on the extent of the disablement and the type of disability.

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Q.3 The Payment of Wages Act, 1936 provides that the wages are to be paid at regular intervals and without any unauthorized deductions. Discuss explaining the limit, if any, on the deductions the employer can make from the wages of an employee.

Ans3. The Payment of Wages Act, 1936 is enacted to regulate the payment of wages to certain classes of employed persons. As per this act, the employer is responsible for paying the wages of an employee at regular intervals, and any unauthorized deductions from the wages of an employee are prohibited. However, the employer is allowed to make certain deductions from the wages of an employee under specific circumstances, which are as follows:

1. Deductions for statutory purposes: The employer is authorized to make deductions from the wages of an employee for statutory purposes such as income tax, provident fund, and other authorized deductions.

2. Deductions for absence from duty: The employer can make deductions for the period during which the employee was absent from duty without any sufficient cause.

3. Deductions for damages or loss: The employer can make deductions for damages or loss caused to the employer's property by the employee's willful act or negligence.

4. Deductions for accommodation: The employer can make deductions for providing accommodation to the employee, subject to certain conditions.

5. Deductions for other purposes: The employer can make deductions for other purposes, such as recovery of advances, loans, or overpayment of wages.

However, the total deductions made by the employer from an employee's wages in any wage period should not exceed 50% of the total wages payable to the employee.

In conclusion, the Payment of Wages Act, 1936 provides that the employer can make deductions from the wages of an employee under specific circumstances, subject to certain limits. Any unauthorized deductions from the wages of an employee are prohibited.

Q.4 How is the amount of bonus calculated in the Payment of Bonus Act 1965? Discuss the provisions of the Act in relation to the disqualification of bonus.

Ans4. The Payment of Bonus Act, 1965 provides for the payment of annual bonus to employees of certain establishments. The bonus amount is calculated as a percentage of the employee's salary or wages.

According to Section 10 of the Act, an employee is entitled to receive a bonus if he has worked for at least 30 working days in the accounting year. The bonus is to be calculated as a percentage of the employee's salary or wages, which shall not be less than 8.33% of his salary or wages earned during the accounting year. However, if the allocable surplus exceeds the amount of the minimum bonus payable to the employees, the employer can pay higher bonus up to 20% of the salary or wages earned by the employee.

The Act also provides for disqualification of bonus under certain circumstances. According to Section 9, an employee shall not be disqualified for receiving bonus unless he has been dismissed from service for fraud or riotous or violent behavior while on the premises of the establishment. The Act also provides that an employee who has been found guilty of misconduct causing financial loss to the employer shall not be disqualified for receiving bonus unless he has been punished for such misconduct.

In addition, the Act also provides for set off and set on of the bonus against the amounts due from the employee to the employer, such as loan, damages, etc. However, the amount of set off or set on shall not exceed 50% of the bonus payable to the employee.

Overall, the Payment of Bonus Act, 1965 aims to ensure that employees receive a share of the profits of the establishment in which they work, while also providing certain safeguards against disqualification and unauthorized deductions.

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Q.5 When and to whom is Gratuity payable under the Payment of Gratuity Act,1972?Are the following persons entitled to gratuity under the Payment of Gratuity Act,1972?

(i) An employee re-employed without any break-in-service.

(ii) An employee who has not rendered 5 years of continuous service.

(iii) A retrenched employee.

(iv) Trainee

Ans. Gratuity is payable to an employee who has rendered continuous service of five years or more on his termination of employment due to retirement or death or disablement due to an accident or disease. It is paid by the employer to the employee as a form of gratitude for his services.

Answering the second part of the question:

(i) An employee re-employed without any break-in-service: If an employee is re-employed without any break in service, the previous years of service will also be taken into consideration for calculating the gratuity.

(ii) An employee who has not rendered 5 years of continuous service: An employee who has not rendered five years of continuous service is not entitled to gratuity. However, in case of death or disablement due to an accident or disease, the requirement of continuous service is waived off.

(iii) A retrenched employee: Yes, a retrenched employee is entitled to gratuity if he has completed five years of continuous service. In case of death or disablement due to an accident or disease, the requirement of continuous service is waived off.

(iv) Trainee: Trainees are not entitled to gratuity as they are not considered employees under the Payment of Gratuity Act, 1972.

Q.6 An employee suffering from heart disease collapsed after working for eight hours on a hot and humid day.There was evidence to the effect that collapse was likely to have been caused by strain of work on a diseased heart. Will it be considered injury by accident arising out of and in the course of employment? Explain and discuss 'arising out of' and 'in the course' of employment as used in the Employee Compensation Act, 1923.

Ans6. Whether the employee's collapse due to heart disease will be considered an injury by accident arising out of and in the course of employment depends on the specific circumstances of the case. However, in general, the collapse may be considered an injury by accident if it can be established that it was caused by a specific work-related activity or condition and occurred during the course of employment.

The Employee Compensation Act, 1923 defines an employment injury as a personal injury caused to an employee by an accident arising out of and in the course of his employment. The phrase 'arising out of' refers to the connection between the employment and the injury, which means that the injury must be a direct result of the employment. On the other hand, 'in the course of' refers to the time, place, and circumstances under which the injury occurred, which means that the injury must have occurred during the course of employment.

In the given case, if it can be established that the employee's heart disease was aggravated or triggered by the work-related strain on a hot and humid day, then the collapse may be considered an injury by accident arising out of and in the course of employment. However, if the collapse was not caused by a specific work-related activity or condition, or if it occurred outside the course of employment, then it may not be considered an employment injury.

It is important to note that the burden of proof lies with the employee to establish that the injury was caused by an accident arising out of and in the course of employment. The employer may also defend against the claim by proving that the injury was not caused by a work-related activity or condition or that it occurred outside the course of employment.

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