

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Central Information Commissioner

CIC/EPFOG/A/2017/315385

Kirubananthan K v. PIO, EPFO, Chennai

RTI	:	13.09.2016
FAO	:	Nil
Second Appeal	:	22.10.2016
Hearing	:	31.07.2017
Appellant	:	Present
Public Authority	:	Mr. Apurv Gautam, APFC
Decided On	:	02.08.2017

FINAL ORDER

FACTS:

1. The appellant had filed RTI application on 13.06.2016, sought information regarding details of the EPF A/c no. & EPF A/c statement of Smt. M Nithya (wife of the appellant) from the date of opening of account to bill date. The CPIO, vide its reply dated 07.10.2016 informed the appellant that required information could not be provided as details requested are of personal nature and the disclosure of which has no relationship to any public activity or interest and it infringes the privacy of the individual concerned. Therefore, the said information is exempted from disclosure as per section 8 (1) (e) & (J) of the RTI Act, 2005. Being aggrieved with the CPIO reply, appellant filed First appeal on 13.10.2016 and first appellate authority upheld the decision of CPIO. Being dissatisfied, appellant has approached the Commission.

Decision :

2. The appellant stated that his wife had filed a maintenance petition against him and he wanted the information sought to prove that she was employed. The officer stated that the information sought by the appellant could not be disclosed as that was personal information of third party.

3. The fact of a person's employment as available in a public authority cannot be considered as private or personal information of another person. While

the savings bank account or salary account of another person could be his or her personal information, the amount of salary of a public servant cannot be considered so. Salary information of public servant is one of the listed information to be given under Section 4(1)(b) of RTI Act. Similarly the PF related information of public servant is not private information, because by a statute a share of contribution from employee and employer is credited in PF account and there will be no other credits or debits from that account. The appellant is asking about PF details of a third person who is not employer of this public authority. She is also not a public servant. However if her information is held by the public authority or it is under his control, he has to apply the Section 8 to decide the issue of disclosure. The PIO thought that it was personal information and denied under Section 8(1)(j) of RTI Act. That section contains a proviso relating to public activity or public interest. Her employment and PF contribution cannot be considered as relating to public activity. Question remained to be decided is whether there is public interest in disclosure. Spouses inter se have right to maintenance especially when living separately or under disputes. If one spouse has filed petition for maintenance, that has to be decided based on the material information available about the incomes and investments of each spouse. Justice cannot be rendered without complete information. Right to maintenance, duty to maintain and right to seek the remedy of maintenance are recognized by law and procedure also was provided.

4. In ***Kusum Verma v Mahinder Kumar Veerma*** (<https://indiankanoon.org/doc/94345757/>) case the Delhi High Court held that all kinds of investments and incomes made by spouses shall be furnished in the form of affidavit in every maintenance petition, on their own. The Court held:

19.1 Matrimonial jurisdiction is of a special nature and deserves a special attention. Lengthy trial in matrimonial proceedings is uncalled for and contrary to the spirit of Hindu Marriage Act.

19.2 The affidavit of assets, income and expenditure of both the parties are necessary to determine the rights of the parties under Sections 24 to 27 of the Hindu Marriage Act and, therefore, should be filed by both the parties at the very threshold in order to curb the delay and expedite the trial in terms of Section 21-B of the Hindu Marriage Act.

19.3 Applying the aforesaid principles laid down in Section 10(3) of the Family Courts Act, 1984 read with Section 165 of the Indian Evidence Act relating to the duty of the Court to ascertain the truth and the duty of the parties to disclose their income under Section 106 of the Indian Evidence Act, this Court has formulated the format of the affidavit of assets, income and expenditure attached to this order as Annexure 'A' which shall form part of this judgment. The documents required to be filed along with the affidavit are prescribed in the format of the affidavit.

19.4 All pleadings including petitions under Sections 9 to 13 of the Hindu Marriage Act and the written statement shall be accompanied with an affidavit of assets, income and expenditure in the format provided in Annexure A and shall be accompanied by the relevant documents mentioned therein.

*19.8 Paras 33.3 and 33.5 of the order dated 18th September, 2014 are modified to the extent that the parties shall file the affidavit of their assets, income and expenditure in format provided in Annexure A, instead of the affidavit prescribed in *Puneet Kaur v. Inderjeet Sawhney 2011 (183) DLT 403*.*

Thus a right to information between spouses has been recognized by judicial precedent in Delhi High Court. The provident fund is not investment nor an ordinary bank account, but a security plan for the working employee. It is a welfare scheme launched by Government of India for securing retired lives of salaried job holders either in private or public sector. Recently the Government of India has launched an **Employee Enrolment Campaign 2017**, on the recommendation of the Central Board (EPF). Government of India on 30 December 2016 notified a special campaign to enrol left out eligible workers under the under the EPF&MP Act 1952. The campaign aims to encourage employers to voluntarily come forward and declare details of employees who were entitled for membership between 1 April 2009 and 31 December 2016 but could not be enrolled for any reason. Running from 1 to 31 January March 2017 this special campaign offers a limited window to employers to bring declare and enrol left out workers as one time opportunity. The scheme offers attractive concessions to encourage voluntary compliance. Under the Scheme, the employee's share of contribution if not deducted by the employer is waived. The

damages to be paid have been kept at a nominal rate of Rupee 1(one) per annum. The administrative charges for such declarations have also been waived.

5. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 came into effect on 4 March 1952. It is administered by a Central Board of Trustees, composed of representatives of the Government of India, State governments, Employers and Employees. The board is chaired by the Union Labour Minister of India.

6. The Constitution of India under "Directive Principles of State Policy" provides that the State shall within the limits of its economic capacity make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old-age, sickness & disablement and undeserved want. The EPF & MP Act, 1952 was enacted by the Parliament of India and came into force with effect from 4 March 1952 as part of a series of legislative interventions made in this direction. Presently, the following three schemes are in operation under the Act:

- a) Employees' Provident Fund Scheme, 1952
- b) Employees' Deposit Linked Insurance Scheme, 1976
- c) Employees' Pension Scheme, 1995 (replacing the Employees' Family Pension Scheme, 1971)

7. The EPFO has the dual role of being the enforcement agency to oversee the implementation of the EPF & MP Act and as a service provider for the covered beneficiaries throughout the country.

8. The Act is administered by Central Board of Trustees, EPF a Statutory Board constituted by the Central Government under Section 5A of the Act. The CBT, as the Board is informally called, consists of a Chairman, a Vice Chairman, 5 Central Government Representatives, 15 State Government Representatives, 10 Employees' Representatives, 10 Employers' Representatives with Central P.F Commissioner and the Member Secretary to the Board. The Executive Committee of the CBT is constituted from among the members of the CBT to assist the Central Board in discharge of its function related to Administrative matters.

9. The officials of the organization in the Cadre of Commissioners are appointed by the Central Board under Section 5D for efficient administration of the Act and Schemes. To this end, the Commissioners of the Organization are vested with vast powers under the statute conferring quasi-judicial authority for assessment of financial liability on the employer, search and seizure of records, levy of damages, attachment and auction of a defaulter's property, prosecution and arrest and detention of defaulters in civil prison etc.

EPF Withdrawal New Rules- 2016

10. The Ministry of Labour & Employment, Government of India, has recently made few amendments in the Employees' Provident Fund Scheme, 1952 (PF Scheme). These guidelines are mainly related to 'early withdrawals' from Provident Fund & provisions related to PF withdrawals. These latest EPF withdrawal rules are effective from 10 February 2016. As per new rule full EPF withdrawal is not allowed up to retirement age. This change adversely impact individuals who frequently change job and withdraw the EPF amount. The rules also facilitated the continuity of EPF membership, Increase in Age limit to withdraw 90% of PF balance, Partial withdrawal of EPF amount on Resignation and Increase of retirement age. All this establish that the PF account of a salaried employee is for the future and retirement security measure, which cannot be counted as present 'income' for the purposes of maintenance decision. However the fact whether spouse is employed could be relevant for the spouse. If the public authority holds any information, which can show that a spouse is an employee, that part of information could be shared under RTI Act.

11. The Commission observes that employment status of person can be furnished to spouse for the purpose of deciding maintenance, if sought under RTI Act, because such information could be an essential component in deciding maintenance issues. If wife is a petitioner for maintenance, she has a right to know the salary details, similarly a husband can defend his interest seeking the salary details and employment status of wife. However, the information about future fund like PF is not relevant information to be disclosed. In case old spouses are fighting for maintenance, perhaps the amount each spouse receive as 'pension' including the amount from PF could be relevant information in

deciding the quantum of maintenance. Hence the future fund (PF) of Mrs. Nithya could be her own information, and third party information.

12. The Commission directs the respondent authority to provide the employment status relating to Mrs. M. Nithya alone to the appellant, within 15 days from this date. Disposed of.

SD/-
(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

1. The CPIO under RTI,
EPFO, Regional Office, 37,
Royapettah High Road,
Chennai-600014.
2. Shri Kirubananthan K,