

**COMMITTEE ON PETITIONS**

**(FIFTEENTH LOK SABHA)**

**TWENTY FOURTH REPORT**

**MINISTRY OF LABOUR AND EMPLOYMENT**

**(Presented to Lok Sabha on 20 December, 2012)**



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## **COMPOSITION OF THE COMMITTEE ON PETITIONS**

**Shri Anant Gangaram Geete** - **Chairman**

### **Members**

- 1. Shri Khiladi Lal Bairwa**
- 2. Shri Mukeshkumar Bheravdanji Gadhvi**
- 3. Shri Syed Shahnawaz Hussain**
- 4. Dr. Manda Jagannath**
- 5. Shri G.V.Harsha Kumar**
- 6. Shri Narahari Mahato**
- 7. Shri Bhartruhari Mahtab**
- 8. Dr. Sanjeev Ganesh Naik**
- 9. Shri Nama Nageswara Rao**
- 10. Prof.(Dr.) Ram Shankar**
- 11. Shri Rakesh Singh**
- 12. Shri P. Venugopal**
- 13. Shri Adagooru Vishwanath**
- 14. Prof. (Dr.) Ranjan Prasad Yadav**

### **SECRETARIAT**

<b>1. Shri P.K. Grover</b>	-	<b>Additional Secretary</b>
<b>2. Smt. Sudesh Luthra</b>	-	<b>Joint Secretary</b>
<b>3. Shri Shiv Kumar</b>	-	<b>Director</b>
<b>4. Md. Aftab Alam</b>	-	<b>Deputy Secretary</b>
<b>5. Smt. Jagriti Tewatia</b>	-	<b>Under Secretary</b>
<b>6. Shri Jyoti Prakash Krishna</b>	-	<b>Executive Assistant</b>

**TWENTY FOURTH REPORT OF THE COMMITTEE ON PETITIONS  
(FIFTEENTH LOK SABHA)**

**INTRODUCTION**

I, the Chairman, Committee on Petitions, having been authorized by the Committee to present the Report on their behalf, present this Twenty Fourth Report on the Action Taken by the Government on the recommendations of the Committee on Petitions made in their Fourteenth Report (15th Lok Sabha) on the representation received from Shri H. Mahadevan, Deputy General Secretary, All India Trade Union Congress (AITUC) and forwarded by Shri Gurudas Das Gupta, MP, Lok Sabha regarding : Default in the contribution to the Provident Fund by the employers.

2. The Committee considered and adopted the draft Twenty Fourth Report at their sitting held on 19 December, 2012.
3. The observations/recommendations of the Committee on the above matter have been included in the Report.

**NEW DELHI;**

**19 December, 2012  
28 Aghayana, 1934 (Saka)**

**Anant Gangaram Geete,**

**Chairman,  
Committee on Petitions.**

**ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS OF THE COMMITTEE ON PETITIONS MADE IN THEIR FOURTEENTH REPORT (15th LOK SABHA) ON REPRESENTATION FROM SHRI H. MAHADEVAN, DEPUTY GENERAL SECRETARY, ALL INDIA TRADE UNION CONGRESS (AITUC) AND FORWARDED BY SHRI GURUDAS DAS GUPTA, MP, LOK SABHA REGARDING DEFAULT IN THE CONTRIBUTION TO THE PROVIDENT FUND BY THE EMPLOYERS.**

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1. The Committee on Petitions in their Fourteenth Report (15th Lok Sabha) presented to Lok Sabha on 21 July, 2011 had examined the representation received from Shri H. Mahadevan, Deputy General Secretary, All India Trade Union Congress (AITUC) and forwarded by Shri Gurudas Das Gupta, MP, Lok Sabha regarding: Default in the contribution to the Provident Fund by the employers.
2. The Committee had made certain observations/recommendations in the matter and the Ministry of Labour & Employment were requested to furnish their Action Taken Replies thereon for consideration of the Committee.
3. The Action Taken Replies have since been received from the Ministry of Labour & Employment in respect of all the observations/recommendations contained in the aforesaid Report which have been detailed in the succeeding paragraphs.
4. In para 55 of the Report, the Committee had observed as follows:

"The Committee are constrained to note that the number of defaulting Establishments and the quantum of amount in default have risen over the years. While the number of defaulting Establishments in the exempted/un-exempted sectors during the year 2005-06 was 76,958, the same had risen to 81,471 during the year 2007-08. Similarly, the amount of default rose from Rs.2,530.07 crore during the year 2005-06 to Rs.2,846.58 crore during the year 2007-08. On the other hand, the amount being realized from the defaulters has decreased during the said period from Rs.1,958.55 crore to Rs.1,103.99 crore. As a result thereof, the arrears of amount-which remained unrealized from the defaulters was Rs.2,846.58 crore even after the recovery of Rs.1,103.99 crore during the year 2007-08. In fact, the amount in default further rose to Rs.3,911.28 crore during the year 2008-09, out of which only Rs.918.16 crore were recovered from the defaulting Establishments and the rest of the amount, i.e. Rs. 2,993.12

crore remained unrealized. These figures belie all claims of the Ministry that adequate steps have been/ are being taken by them to recover the amount from the defaulting Establishments. Needless to say, the Funds belong to the workers who are generally poor and belong to the lower strata of the society. The funds accrued to them are utilized by them in times of their emergent needs like construction of their houses, education of their children, marriage or illness in their families. It, therefore, becomes the sacrosanct duty of the Government to ensure realization of the contribution from the defaulters and also their timely deposit without making any allowances for any delays whatsoever."

5. In reply to the aforesaid observation of the Committee, the Ministry of Labour & Employment have stated as under:

" Necessary directions were issued to all field offices vide H.O. Circular No. RRC-II/28(26)06/ABR/51709 dated 25.1.2010 to take all coercive actions to recover the arrears. Special emphasis was directed to be made to recover the locked up Arrears by getting it converted from the Not Immediately Realisable (NIR) demand to Immediately Realisable demands. A substantial portion of the NIR dues are due to stay granted by courts. Hence, directions are issued to get the stay vacated.

*The details of amount involved towards NIR Arrears as on 31.03.2011 with details of Coercive action taken for recovery of blocked arrears are as follows:*

**Details of NIR arrears as on 31.03.2011**

<b>Status of Not Immediately Realizable Arrears</b>	<b>Number of Cases</b>	<b>Amount Involved (Rs. In Crores)</b>	<b>% of Total</b>
(a) Stay by Courts	5656	1058.50	56.80%
(b) Under Liquidation	996	249.52	13.39%
(c) Others	13707	555.49	29.81%

**Details of Coercive action taken for recovery of blocked arrears as on 21.03.2011**

<b>Sl. No.</b>	<b>Mode of Actions</b>	<b>2010-2011</b>	
		<b>No. of Cases</b>	<b>Amount Recovered (Rs. in crores)</b>
1.	Bank A/cs attached	15423	187.13
2.	Properties Attached	603	14.81
3.	Arrest of Defaulters	41	1.04
4.	Public Auctions of Property	36	15.87

Besides above, 475 complaints were filed against the defaulting employers under section 406/409 of the IPC. All these efforts have resulted in the recovery of Rs.218.85 crore out of blocked arrears of Rs.1863.51 crore.

**Details of Coverage Membership & Recovery for last three years**

	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>
<b>Coverage</b>	5,73,063	6,15,902	6,60,544
<b>Membership</b>	470.72 lacs	587.86 lacs	617.42 lacs
<b>Recovery (Due)</b>	391128.02 lacs 91815.70 lacs (23.47%)	413145.04 lacs 120830.63 lacs (29.24%)	4,62,084.38 lacs 163870.54 lacs (35.46%)
<b>(Recovered)</b>			

From the above it is clear that the increase in the amount of P.F. default is due to the fact that number of Establishments covered increased from 573063 in 2008-09 to 660544 in 2010-11 and Membership increased from 470.72 lacs in 2008-09 to 617.42 lacs in 2010-11 i.e 31.16%, whereas default amount has only increased from Rs.391128.02 lac in 2008-09 to 413145.04 in 2009-10 and Rs.462084.38 lac in 2010-11 i.e.18.14%-which is proportionately very low in comparison to the increase in the Membership. On the other hand the Amount recovered increased from Rs.91815.70 lacs in 2008-09 to Rs.163870.54 lacs in 2010-11 i.e. from 23.47% in 2008-09 to 35.46% in 2010-11.

	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>
<b>Total No. of Defaulting establishment</b>	148353	152228	161756
<b>No. of defaulting establishments from which amount realized</b>	68422	73169	83539
<b>Percentage (%)</b>	46.12 %	48.06 %	51.64%

From the above, it reveals that during the year 2008-09 number of defaulting Establishment were 148353 and out of which amount has been realized from 68422 Establishments (46.12%). Similarly, in the year 2009-10, total number of defaulting Establishments were 152228 and out of which amount has been recovered from 73169 Establishments (48.06%). Again in the year 2010-11, the total defaulting Establishments were 161756 out of which amount has been recovered from 161756 Establishments (51.64%). Hence, there in increase in percentage (%) as noted above along with number of defaulting Establishments from whom the amount has been recovered.

As per Annual Report of 2009-10, the corpus of EPF & other dues is Rs.3,77,375.65 crore as on 31.03.2010 whereas the P.F. and other dues to be recovered are Rs.2923.14 crore which is the default amount which in terms of percentage terms comes to 0.77%.

However, it is stated that assessment and recovery of dues is a continuous process. Fresh demand is added every year on account of assessment of dues and arrears of previous years are also recovered in subsequent years."

6. In para 56 of the Report, the Committee had observed/recommended:

"The contribution of the employer towards the Fund is monitored by a computerized mechanism namely, Computerized Compliance Tracking System (CCTS) and any default in the contribution by the establishment is detected by the CCTS which generates the list of defaulting establishment. Besides this the EPFO has also initiated computerization of all their records in a phased manner which would further help them in timely detection of the defaulters. The Committee note that out of 120 EPFO offices, 119 have been computerized in 3 phases. The Committee are, however, concerned to note that despite all efforts, the only remaining Office of Keonjhar could not still be computerized due to lack of availability of space/any building. The Committee find the reason attributed by the Ministry for non-computerization of Keonjhar Office as totally unacceptable. They, therefore, recommend that alternate space must be found immediately so that early computerization of this office can also be done within a specified time. The Committee expect that as a result of computerization of all the EPF offices, the work of these offices will be streamlined and it would help in monitoring the provident fund defaults. The Committee would like to be apprised of the action taken in the matter."

7. In reply to the aforesaid recommendations, the Ministry of Labour & Employment have stated that the existing office building of Sub-Regional Office, Keonjhar has only two small rooms and the Computerization Project cannot be implemented in the premises. All efforts are being made to locate a suitable premises at Keonjhar. The matter has also been taken up with local district administration and computerization will be implemented as soon as suitable premises is available.

8. In para 57 of the Report, the Committee had observed/recommended:

"Computerization of all records of EPFOs will help the Organization to know about the defaulters, if their contribution is not deposited upto a particular date

on which contribution was supposed to be deposited. This will enable them to take legal action against the defaulters as per the existing provision in Section 14 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 under which prosecution can be launched against an employer for default in payment of his contribution. The Committee, note that since non-payment of contribution is a cognizable offence, the EPFOs have instructed all the offices to take appropriate action to file cases under Section 14 of the Act. The Committee note that as per the action plan of the Ministry, December has been fixed as the month of coverage drive. The Committee also note that prosecution cases are also filed before various courts under Sections 406/409 of the Indian Penal Code. The Committee, are, however, constrained to note that despite the existence of legal provisions to take action against the defaulters a total of 29,318 default cases were reported in 2009-10 who were involved in default of Rs.2,84,086.04 lakh. Out of these, arrests were made only in 21 cases and of these only 7 could be convicted. While explaining the reasons for dismal rate of convictions of the defaulters the witnesses submitted before the Committee during oral evidence that numerous cases (about 70%) are pending mainly because as soon as a case is filed and recovery proceedings begin, the defaulter employers generally go to the courts and take stay orders. The Committee suggested that performance of the empanelled counsels should be monitored regularly and action against non-performing counsels/advocates should be taken by de-empanelling them. In response, the Secretary, Ministry of Labour & Employment and Employment agreed to this and submitted before the Committee that, "certainly this is a most un-satisfactory situation... as mentioned by CPFC, the performance of the counsels appointed by the Provident Fund Organization will be monitored every three months..." He further assured the Committee that whenever it is found that they have not performed, administrative action will be taken against them. The Committee note from Ministry's subsequent written reply that as assured before the Committee, a number of measures have been taken for early disposal of prosecution cases and realization of arrears. The names of 21 advocates have been dropped from the panel of EPFO on account of their non-satisfactory performance. New panels of 335 advocates have been formed throughout the country with directions to attend to the pending cases with regularity and file applications for vacation of stay/early hearings in pending cases. Directions have also been issued to field offices to monitor the performance of these advocates on monthly basis. The Committee recommend that such measures should continue to be followed strictly. "

9. In their Action Taken Reply, the Ministry of Labour & Employment have stated:

"Instructions have been issued to ACC(Zones) to monitor and evaluate the performance of panel of advocates. As per Head Office circular No. LC-3(1)06/Policy matter/55313-55323 dated 16.12.2010, the power to constitute

panel of advocates for High Court and subordinate courts has been delegated to Zonal ACCs. While finalizing the panel, ACC(Zones) have to assess the performance of existing panel advocates on the parameters of the number of cases assigned, cases decided in favour of organization, against the department and remanded back by the Court alongwith the periodicity of pending cases and other appropriate action required in each case. As reported by ACC(Zones), 82 number of panel advocates, whose performance was found unsatisfactory, have been removed from the panel during the Block Year 2010-12."

10. In para 58 of the Report, the Committee had recommended:

"Besides supervision of the work of appointed counsels and de-empanelment/transfer of non-performing counsels, all the EPFOs across the country should also instruct their counsels to keep track of the default cases and file advance caveats in the courts so as to make them aware of the case much before the defaulting Company approaches them for grant of stay. The Committee are of the firm belief that by doing so, Companies/Industries/Factories will be discouraged to move the courts and take stay orders. The Committee, therefore, recommend that a foolproof system may be evolved to keep track of the performance of the empanelled counsels and also to ensure that there are minimum number of court cases filed by the defaulters and maximum stay orders of the courts are got vacated so as to keep a firm check on the default cases."

11. In response thereto, the Ministry of Labour & Employment have stated that the importance of filing stay vacation applications and getting the stays vacated has been repeatedly emphasized to field offices. Field offices have to file stay vacation applications wherever stays are granted by court, get the stays vacated and recover the locked up NIR dues for crediting the same to members accounts. A quarterly review of performance of regions in the area of vacation of stay and recovery of NIR dues is being conducted and explanations have been called for from low performing regions. As a result of these efforts, the total number of stay cases has come down from 5171 to 4483 during the year 2010-11.

12. In para 59 of the Report, the Committee had observed/recommended:

"The Enforcement Officers (EOs) and Account Officers (AOs) are rotated every four years. However, after the matter was seized by the Committee, instructions have been issued for rotation of jurisdiction of EOs every two years. Also, where specific complaints are received, the Head Office intervenes to ensure transfer of

such EO<sup>s</sup>. The Office has also identified sensitive and non-sensitive posts within the Organization for the first time. Whenever a vigilance case is received, Officers are transferred from sensitive posts (EO<sup>s</sup>) to non-sensitive ones (AO<sup>s</sup>). The Committee, however, note that in the year 2009-10 there were certain States where the default cases were quite high while conviction rate was very low, for instance, in Andhra Pradesh out of 2,529 default cases only two were convicted, in West Bengal and Goa out of 761 and 168 default cases respectively, only one person was convicted. In the remaining States such as Karnataka, Kerala, Madhya Pradesh, Maharashtra, Gujarat, Haryana, Punjab and Uttar Pradesh, out of 2,160, 2,572, 1,322, 1,852, 1,549, 1,754, 1,117 and 1,326 default cases respectively, there were 'nil' convictions. In Tamil Nadu, where maximum number of default cases were reported i.e. 7,855, only three were convicted. The Committee further note that the legal matters are dealt with by the Assistant Provident Fund Commissioner (Legal)/ Regional Provident Fund Commissioner (Legal) on behalf of the Department. The Committee are, however, dismayed to note that despite poor performance of the counsels and dismal rate of convictions of the defaulters, no Assistant Provident Fund Commissioner (Legal)/ Regional Provident Fund Commissioner (Legal)/ has yet been transferred and they have instead been given time to improve their functioning and show results. This shows that the whole issue is not being dealt with the seriousness it deserves despite the Committee's directions to supervise and sternly take action against the non-performers to curb the provident fund payment default and court cases. The Committee are of the firm view that merely by appointing new counsels and issuing warning alone to the concerned would not yield the desired results unless and until the Government makes some special provisions or implement result oriented action plans and resolutely implement and supervise the same to curb the default cases especially in States such as West Bengal, Tamil Nadu, Karnataka, Madhya Pradesh, Gujarat, Haryana, Punjab, Uttar Pradesh and Kerala, where maximum cases of default have been reported in recent years."

13. In their Action Taken Reply, the Ministry of Labour & Employment have submitted as under:

"To have a realistic review of legal work, a performance analysis of regions in legal matters has been conducted. Low performing regions have been identified and specific directions have been issued to such regions to improve their performance. With persistent monitoring, the overall position has improved. The total number of stay cases has come down from 5171 to 4483, while correspondingly, the number of stays vacated has increased from 270 to 372 during year 2010-11."

14. In para 60 of the Report, the Committee had observed/recommended:

"In a vast organization like Provident Fund, where issue of default in terms of regular payment of Provident Fund Contribution has become a rule rather than an exception, it is imperative to have an impartial and independent set up of Provident Fund courts, whose basic function should be to act as an immediate and fast arbitrator in a dispute arising between the defaulter employers and employees/Unions and vice versa, thereby streamlining the speedy, effective and efficient functioning of the EPFOs. To give effect to this, the Committee suggested during the course of oral evidence that the Government should take effective steps like setting up of the special courts and special benches for the expeditious trial at the District Level; in High Courts/ Regional Court to arbitrate on the issue of provident fund default and appeals from individuals/organizations. The Committee note with satisfaction that all Regional Provident Fund Commissioners-in-charge have been directed to take up the matter with High Courts of their respective States/Region regarding setting up special courts/special benches for hearing cases of the EPFO and expedite their disposal. Zonal Additional Central Provident Fund Commissioners have been instructed to monitor the progress and submit Action Taken Report. The Committee would, therefore, like to recommend that action in this regard should be expedited in consultation with the Law Ministry in a time bound manner. The Committee, would like to be apprised of the conclusive action taken in this regard."

15. The Ministry of Labour & Employment in their Action Taken Reply have stated as follows:

"Directions have been issued to all RPFCs to take up the matter with High Courts of their respective states/Region for setting up special courts/special benches for hearing EPFO cases and expedite their disposal. Some of the RPFCs have taken up the matter with Registrar, High Court.

- \* In Tamil Nadu, a separate bench of Madras High Court has been designated for hearing EPFO cases. As a result, the disposal rate has gone up.
- \* Matter is being taken up with Ministry of Law through Ministry of Labour & Employment for setting up separate courts/special benches for hearing EPF related cases."

16. In para 61 of the Report, the Committee had observed/recommended:

"There lies huge amount of unclaimed provident fund of migrant labourers/contract labourers working in different industrial regions of the country which is parked with the different provident fund offices because of lack of awareness amongst these illiterate labourers. The Committee are, therefore, of the

considered view that a special drive must be initiated to create awareness amongst these contract workers by giving focussed advertisements in Hindi and regional language newspapers, distribution of leaflets in remote areas, through electronic media, by organizing seminars about defaults in payment of provident fund in various cities, carrying out survey by the field officers, involving trade unions, etc. The Committee would, therefore, like to recommend that to give effect to the above suggestions action should be initiated expeditiously. The Committee also recommend that accountability of the field officers should also be fixed so that they ensure that all Organizations/workers/contract workers who are working are covered under the Provident Fund Scheme by way of frequent surveys to be carried out by the field officers at different places across the country."

17. In response to the aforesaid recommendations, the Ministry of Labour & Employment have stated:

" EPFO offices have been striving hard to create awareness amongst the workers having inoperative accounts. Special drives have been made by publicity through print and electronic media to educate the workers to file their claims for settlement or transfer their fund to their existing account. Similarly, the employers and employees unions have also been requested to advise the members to file their claims for settlement. These drives have now become a continuous feature.

Advertisements, Public attention notices, Newspapers in Hindi and other regional languages are included for such drives. Recently a campaign was made through all leading channels of the television all over India to create awareness amongst the workers having inoperative accounts. The Video clips in this regard are also placed on the website of the EPFO at [www.epfindia.com](http://www.epfindia.com) to create awareness amongst the workers.

The Compliance function with regard to checking under compliance has been strengthened and the Area Jurisdiction of the Enforcement Officers has been restored to ensure accountability."

18. In para 62 of the Report, the Committee had observed/recommended:

"As regards the issue of under coverage of the contract workers, the Committee were informed during oral evidence that steps to amend the laws related to the exploitation of contract worker by his employer like giving less wages, making him do work, by not providing him facilities, etc. is being worked out. The Committee would like the Ministry to expedite the same and intimate them the final conclusive action taken in this regard."

19. In their reply, the Ministry of Labour & Employment have stated:

"A proposal for amending the Contract Labour (Regulation & Abolition) Act, 1970 to safeguard the interests of the Contract Workers has been prepared. However, it was decided to have an Impact Study of the proposed amendments on the economy and financial implications for the Central and the State Government, including different sectors of production and employment which depend on labour as one of their important input before moving the proposal ahead. The V.V. Giri National Labour Institute was entrusted with the task and they have submitted their Study Report. The Report has been examined and NLI have been asked to rework the projections as per prescribed statistical procedures. NLI is taking necessary action. On receipt of final Report/ projections from NLI, the matter will be examined accordingly and further action will be taken for amending the said Act."

20. In para 63 of the Report, the Committee had observed/recommended:

"After deliberating at length upon the rising cases of default in Provident Fund and the meagre prosecution rate of defaulters, the Committee have come to the conclusion that the existing provisions enshrined in the current Provident Fund Act to tackle the menace of default are inadequate and lack vigour to curb the defaulters. The representatives from the Ministry were also in concurrence with this observation of the Committee and informed that the Act requires amendment to plug the inherent loopholes mainly on three grounds. One is the simplification of forms and procedures for all the stake- holders. Second, very stringent punishment is necessary for those who are not depositing the provident fund and third, incorporating a provision of appeal within the Department so that litigations can be reduced. The Committee note that in order to make it more effective and to ensure that the violation of the provisions is discouraged, the Government has constituted a Working Group consisting of the Members of the Central Board of Trustees, representing the employers and employees to suggest comprehensive amendments in the Act and Scheme. This Working Group will review the existing provisions and suggest amendments to the Act and Schemes including the issues related to the penal provisions to make it more effective and stringent. Further, the proposal submitted by Working Group will be placed before the Central Board of Trustees for their views before forwarding it to the Government for consideration. As per the Action Plan submitted by the Ministry, copies of the proposed amendments have been provided to the Members of the CBT (EPF). The Committee, recommend that the Act should be suitably amended at the earliest by taking into consideration all the provisions to reduce provident fund default, legal provisions pertaining to default in payment of employees and employers money, working of EPFOs, etc."

21. In para 64 of the Report, the Committee had observed/recommended that:

"The measures discussed during the course of oral evidences such as simplification of forms and procedure regarding Provident Fund, provisions of stringent and exemplary punishment to the defaulters, provision of appeal within the Department, separate Courts for the speedy disposal of cases, provision of filing caveats to vacate stay orders, etc. would yield wanted result. The Committee desire that all necessary measures should be taken to ensure that these cases do not linger on for years together, as these cause loss to the employees covered under the Scheme besides increasing their hardship and distress for no fault on their part. The Ministry, being the nodal agency, cannot absolve itself of its responsibility of realizing the amount from the defaulters. The very fact of increase in the number of defaulting establishments and the quantum of unrealized amount over the years amply shows that the provisions of the existing laws are inadequate and the same need to be strengthened/reviewed. The Committee, therefore, recommend that the provisions of the existing law/Act which deal with the defaulting establishments may be reviewed with a view to make it mandatory for the employer to deposit due contribution to the Funds of the employees timely and on regular basis and to award deterrent/exemplary punishment to establishments in case of their failure to do so. The Committee feel that the loopholes in the existing laws be plugged in order that defaulting employers are not able to evade the statutory requirement. In the opinion of the Committee, the non-payment of dues by the employer should be treated as a criminal offence and not a civil offence. It is also necessary that suitable action should be initiated for dereliction of duty, if so, against the officials responsible for non-realization of the amount from the defaulting establishment. The Committee are also of the firm opinion that merely by bringing in amendments and changing norms alone would not yield the desired results as its proper implementation throughout the length and breadth of the country is equally important. The Committee, therefore, recommend the Ministry to implement the aforesaid action plan effectively after getting the existing laws amended. The Committee would like to be apprised of the action taken by the Ministry in this regard within a period of 3 months."

22. In their Action Taken Reply, the Ministry of Labour & Employment have submitted:

"ACC (Zones) are already instructed to monitor the litigation matters especially with regard to filing of counters and stay vacation applications. Through prescribed reports, performance of the regions is being monitored by Zonal ACCs. The intention is to avoid procrastination of matter for years together thus resulting in hardship and denial of benefits to the PF Members.

In recent past, EPF Appellate Tribunal is conducting camp hearings at various places across the country and taking up the pending cases of adjoining regions in such camp hearings. A large number of pending cases have been disposed during such camp hearings.

As already explained in point 60, all RPFCs are already directed to take up with the Registrar of respective High Courts for setting up special courts/special benches to expedite disposal of EPFO cases.

A "Working Group" was constituted by the Chairman, CBT to propose comprehensive amendments to the Employees' Provident Funds & Miscellaneous Provisions Act, 1952. Accordingly, Working Group has submitted its report which was placed before the Central Board of Trustees, EPF. The CBT approved the said report in its 194<sup>th</sup> meeting held on 24.06.2011 and the same has been forwarded to the Government on 04.07.2011. The Government is examining the proposal at present.

Under existing provisions of section 14 AB of EPF & MP Act, 1952, default in remittance contributions by the employer is cognizable criminal offence. The observations of the Committee on enhancement of punishment for default have been noted."

## **OBSERVATIONS/RECOMMENDATIONS**

**23. Shri Gurudas Das Gupta, MP, Lok Sabha had forwarded a representation dated 22.10.2009 signed by Shri H. Mahadevan, Deputy General Secretary, All India Trade Union Congress regarding: Default in the contribution to the Provident Fund by the employers.** In his representation, the petitioner had alleged that there had been tremendous increase in the number of cases of default with regard to the contribution by employers to the Provident Fund in the country, which was causing tremendous hardships to thousands of workers under the Scheme. The Central Provident Fund Commissioner and Regional Provident Fund Officers are failing in their duties to realize the defaulted sum/amount and as such timely payment to the workers is not ensured. The petitioner had, therefore, requested the Committee on Petitions to look into the matter.

**24. During the course of examination of the subject, the representatives of the Ministry of Labour & Employment had expressed agreement with the observations made by the Committee as regards the need to overhaul the existing system and putting an effective check over the defaulting Employers.** The Committee in their Original Report had also desired that certain amendments to the existing Act, i.e. Employees' Provident Fund and Miscellaneous Provisions Act 1952 are required to be carried out so as to address the issues/concerns highlighted by the representationists as well as to streamline the functioning of the EPFO, RPFO, etc. and also to ensure timely payment of PF contributions by the Employers.

**25. The Committee were given to understand that computerization of all records of the EPFOs would help the Organization to detect the defaulters who fail to deposit their contribution on time which would enable them to take legal action against such defaulters as per the existing provisions made**

in Section 14 of the Employees' Provident Fund and Miscellaneous Act, 1952. The Committee had, however, observed that despite the existence of legal provisions to take action against such defaulting Organizations, very few Employers in fact are being convicted. The reason attributed by the Ministry for dismal rate of convictions of defaulters is that whenever a case is filed and recovery process begins, they generally approach the Courts and obtain stay orders on their case. The Committee, had therefore, recommended that a foolproof system may be worked out to keep track of performance of the empanelled Counsels and also to ensure filing of minimum number of court cases by the defaulters as well as vacation of maximum number of stay orders from courts so as to keep a firm check on the cases of default.

26. The Committee note from the Action Taken Replies, now furnished by the Ministry that necessary directions were issued to all field offices to take all corrective actions to recover the arrears. Special emphasis was directed to be laid to recover the locked up arrears by getting them converted from the Not Immediately Realizable (NIR) demand to Immediately Realizable (TR) demand. The Committee have also been informed that a substantial portion of the NIR dues are due to stay granted by Courts. Hence, directions are issued to get the stays vacated. The Committee note with satisfaction that the performance of advocates is being strictly monitored and evaluated as per the instructions issued to ACC (Zones) and 82 number of panel advocates, whose performance was found unsatisfactory, have been removed from the panel during the Block Year 2010-12.

27. The Committee further note that the Field Offices are also being repeatedly emphasized about the importance of filing stay vacation applications and wherever stays are granted by Court, the Field Offices have to get the stay vacated and recover the locked up NIR dues for crediting the same to the Members' accounts. A quarterly review is also being conducted

for evaluating the outcome and explanations have been called for from low performing Regions. The Ministry have stated that as a result of these efforts, the total number of stay cases has come down from 5171 to 4483 during the year 2010-11.

28. The Committee, however, take a different view about the rate of vacation of stay orders during the year 2010-11 when out of 5171 stay cases, only 688 stay orders were got vacated which constitute only 13% of total such cases. The Committee are, of the considered view that the efforts being made by the Government need to be much more intensified to yield satisfactory results in this regard. The Committee therefore, recommend that result oriented policies should be put in place to counter the practice of taking stay orders by the defaulting Companies. This should be followed by carrying out of routine supervision and reviews in order to check that these policies are strictly complied with by the concerned Authorities.

29. Besides this, for achieving the desired results, the Committee would like to reiterate that all the EPFOs across the country should instruct their Counsels to keep track of the default cases and file advance caveats in the Courts so as to check the tendency of defaulting companies from resorting to the tactic of getting stay orders from the courts. The Committee are of the view that filing of caveats to vacate stay orders would be an efficient mechanism to check the tendency of procrastination of matter. Hence, the Counsels on Board should be strictly instructed to file caveats in such cases, where inordinate delays are taking place in the arbitration process because of stay orders taken by the Employers and penal actions should also be taken against the defaulting Companies/Employers and Counsels should also be instructed to plead their cases, accordingly.

**30. The Committee had observed that in certain States like West Bengal, Andhra Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Gujarat, Haryana, Punjab and Uttar Pradesh, the conviction rate is dismal. The Committee had therefore, recommended to implement result oriented action plans and resolutely implement and supervise the same to contain default cases in the above mentioned States.**

The Committee note from the replies now furnished by the Government that a performance analysis of Regions in regard to legal matters has been conducted. Low performance regions have been identified and specific directions have been issued to improve their performance and with persistent monitoring, the overall position has improved. The data furnished by the Government indicates that there is some improvement in the overall tendency of position of realization of amount from the defaulting Establishments. The percentage of realization in respect of the total default has gone upto 51.64% in 2010-11 as compared to 46.12% in the year 2008-09. What is worrying, however, is the fact that the Government has not been able to contain the overall default. The number of defaulting Establishments has gone up from 148353 in 2008-09 to 161756 in the year 2010-11. Moreover, the State wise data indicating the performance in the aforesaid States has not been furnished by the Government. The Committee are of the view that merely issuing of specific directions to low performing regions without any supervision or follow up action is not likely to yield the desired results. The Committee, therefore, urge the Government to strictly supervise, monitor and assess the performance of each State separately and make special provisions to resolutely implement the result oriented Action Plan.

**31. The Committee note from the Action Taken Replies furnished by the Ministry, that directions have been issued to all Regional Provident Fund**

Commissioners (RPFC) to take up the matter with High Courts of their respective State/Region for setting up of Special Courts /Special Benches for hearing the EPFO cases and expedite their disposal. Some of the RPFCs have taken up the matter with the Registrar, High Court. In Tamil Nadu, a separate Bench of Madras High Court has been designated for hearing the EPFO cases and as a result, the disposal rate has gone up. The Committee further note that the matter is being taken up with the Ministry of Law and Justice for setting up of separate Courts/separate Benches for hearing Employees Provident Fund related cases. While taking note of the initiatives being taken for setting up of Special Courts/Special Benches for hearing the EPFO cases, the Committee strongly emphasize the need for following up the issue with the respective Regional Provident Fund Commissioners and the Ministry of Law and Justice so as to ensure that a Separate Bench/Special Court is set up in each State on the lines of the achievement made by Tamil Nadu in this regard so as to ensure expeditious disposal of EPFO cases in various States/Union Territories.

32. As regards the recommendation made by the Committee in their original Report about taking the initiative by the EPFO to create awareness through print and electronic media amongst workers working in different industrial Regions of the country for claiming huge amount of unclaimed Provident Fund of migrant labourers/contract labourers-parked with various Provident Fund Offices, the Committee are satisfied to note that the EPFOs have been striving to create awareness amongst the workers through print and electronic media to operationalise the inoperative accounts. Employees' unions have also been requested to educate the members to file for their claims. Further, the compliance function with regard to checking under compliance has been strengthened and the Area Jurisdiction of the Enforcement Officers has been restored to ensure accountability. The Committee are, however, of the view that the steps initiated by the

**Government should yield positive results. The Committee, therefore, emphasize periodic review of the initiatives taken from time to time to create awareness among the workers so as to understand the impact of such initiatives.**

**33. The Committee have also been informed that a proposal for amending Contract Labour (Regulation and Abolition) Act, 1970 to safeguard the interests of the contract workers has been proposed and the same is at the advanced stage of deliberations in the V.V. Giri National Labour Institute. The Committee would like the Ministry to take up the matter with the concerned Authorities and to place the amended Bill before Parliament expeditiously and also in a time bound manner. The Committee would also like to be apprised of the conclusive action taken in the matter.**

**34. The Committee had observed in their Report that the rising number of cases of default in Provident Fund and meagre prosecution rate of defaulters is a cause of concern and therefore, amendments are required to be carried out in the extant guidelines/provisions enshrined in the current Employers' Provident Fund and Miscellaneous Provisions Act, 1952 to address the matter. The representatives from the Ministry during the course of evidence had also expressed their concurrence to the observation made by the Committee. The representatives had, then, informed the Committee that the Act requires amendments to plug the inherent loopholes mainly on three grounds. One is the simplification of forms and procedures for all the stakeholders. Second, stringent punishment is necessary for those who are not depositing Provident Fund and third, incorporating a provision of appeal within the Department so that litigations can be reduced. The Committee had also been apprised that in order to make it more effective and to ensure that the violation of the provisions is discouraged, the Government had also constituted a Working Group consisting of the Members of the Central Board of Trustees (CBT), representing the employers and employees to suggest comprehensive amendments in the Act and the Scheme as such.**

Now, the Ministry in their Action Taken Replies have informed that the Working Group' as constituted by the Chairman, CBT, has submitted its Report which was placed before the Central Board of Trustees, EPF. The CBT has approved the Report in its 194th meeting held on 24th June, 2011 and forwarded the same to the Government on 4th July, 2011. The Government is examining the proposal at present. The Committee strongly emphasize that final action on the recommendations made by the Working Group should be taken expeditiously so that the inherent loopholes as identified by the Ministry are plugged. The Committee would also like to be apprised about the details of the suggested amendments to the aforesaid Act as well as other suggestions made in the aforesaid report of the Working Group.

**NEW DELHI;**

**19 December , 2012**

**28 Agrahayana, 1934 (Saka)**

**Anant Gangaram Geete,  
Chairman,  
Committee on Petitions.**