



## 273. Is a consultant appointed on a fixed monthly payment considered an employee under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952?

### Legal Framework and Definition of an Employee

The definition of an employee under Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 states that:

*"Employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person –*

- (i) employed by or through a contractor in or in connection with the work of the establishment;*
- (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961.*

This broad definition encompasses all persons who are engaged in the work of an establishment and receive remuneration from the employer, either directly or indirectly.

### Key Judicial Precedents on Consultants and EPF Applicability

#### 1. Telangana High Court Judgment (Cherukuri Group Case) [2023]

- In this case, the EPF Department found that the employer rebranded employees as "consultants" to avoid EPF liability.
- The establishment had previously paid provident fund contributions for the same category of workers but later labelled them as consultants and paid them a fixed monthly fee.
- The court held that mere change in nomenclature (from employee to consultant) does not change the fundamental nature of employment.
- The consultants were performing the same functions as regular employees, were receiving monthly payments, and had deductions for absences, which indicated an employer-employee relationship.
- The court ruled that such consultants should be considered as employees under Section 2(f) of the Act, making them eligible for EPF contributions.

#### 2. Supreme Court Judgment (Marathwada Gramin Bank Case) [2011]

- The case focused on the employer's obligation to contribute to EPF even when there were claims that certain individuals were not regular employees.
- The Supreme Court upheld the principle of social welfare legislation, emphasizing that employers cannot arbitrarily exclude employees from EPF coverage.
- The decision reinforced that EPF benefits are meant to secure the future of workers, and any attempt to circumvent this by renaming designations would not be permitted.

#### 3. Factors Courts Consider Determining Employee Status

Based on judicial interpretations, the following factors determine whether a consultant is actually an employee under the EPF Act:

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- **Nature of Work** – If the consultant performs the same work as regular employees, they are likely to be considered employees.
- **Control and Supervision** – If the employer exercises control over the consultant’s work, schedules, and performance, it indicates an employer-employee relationship.
- **Fixed Monthly Payment** – Regular, fixed monthly payments are a sign of wages, not professional consultancy fees.
- **Work Exclusivity** – If the consultant works only for one establishment, it suggests an employment relationship.
- **Leave and Attendance Policies** – If deductions are made for absence, it implies an employer-employee relationship.
- **Use of Establishment Resources** – If the consultant works on the premises of the company, uses company resources, and follows company policies, they may be deemed an employee.

## Conclusion

A consultant on a fixed monthly payment can be considered an employee under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, if their work structure resembles that of a regular employee. Courts have repeatedly ruled that mere designation as a consultant does not exclude an individual from EPF coverage if they function as an employee.

Employers must be cautious when engaging consultants on a fixed monthly fee, ensuring that they do not exercise employer - like control over them. Otherwise, the EPF authorities and courts may classify them as employees, making them eligible for PF contributions under the Act.



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**Shekhar Ganagaluru, MSW, LLB, Dip. T&D**

HR & IR Specialist | Published Author | Storyteller | Mentor | Trainer | Community Outreach Coordinator | Workplace Safety & Motivation Strategist  
[begreatseries@gmail.com](mailto:begreatseries@gmail.com) or Follow on LinkedIn | Mobile: 96327 11228