

Final Closure

19. **Final withdrawal of accumulations in the fund.**- When a subscriber quits the service, the amount standing to his credit in the fund shall become payable to him;

Provided that a subscriber, who has been dismissed from the service and is subsequently re-instated in the service shall, if required to do so by the Government, repay any amount paid to him from the fund in pursuance of this rule, with interest thereon at the rate provided in Rule 11 in the manner provided in the proviso to Rule 32. The amount so repaid shall be credited to his account in the fund.

Explanation I. - A subscriber who is granted refused leave shall be deemed to have quit the service from the date of compulsory retirement or on the expiry of an extension of service.

Explanation II. - A subscriber, other than one who is appointed on contract or one who has retired from the service and is subsequently re-employed, with or without a break in service, shall not be deemed to quit the service, when he is transferred without any break in service to a new post.

NOTE. - Transfers shall include cases of resignations from service in order to take up appointment in another department of the State Government or under the Central Government without any break and with proper permission of the State Government. In cases where there has been a break in service it shall be limited to the joining time allowed on transfers to a different station. The same shall hold good in cases of retrenchment followed by immediate employment whether under the same or different Government.

State Government's Decisions:

Decision No. (1). - **Advance of pay and amount, embezzled not recoverable from Provident Fund** - Money due on account of advance of pay cannot be legally deducted from the general Provident Fund balance of a deceased subscriber, nor money found after the death of an officer to have been embezzled by him during his life time.

Decision No. (2). - **Recovery of Government dues and final payment of G.P.F not to be mixed up.**- It is in consistent with Section 3 (1) of the Provident Funds Act,1925 for Government to deduct any amount due to them by a subscriber from his accumulations in the General Provident Fund at the time of his retirement, or from undisbursed General Provident Fund accumulations payable to a subscriber's nominees in the event of subscriber's death in service or after retirement, as the case may be, even though the consent of the subscriber or nominee may have been obtained.

In cases where the subscriber or nominee is willing to repay the amount due to Government, the best course is to treat the repayment as a second transaction. The whole of the money should first be paid intact and without any compulsion. Thereafter the payee may be called upon to made good the Government dues.

Decision No (3). - **Immunity against deduction not applicable to liabilities incurred by nominees.**- The immunity provided be Section 3 (1) of the Provident Funds Act against deductions from accumulations in a Provident Funds of any debt incurred or liability owed does not extend to the liabilities incurred by the subscriber's nominee

after the subscriber's death. This is because the express provision in Section 3 of the Act referred to, that the balance in the Fund shall be free from any liability incurred by the subscriber or the dependent before the death of the subscriber, may be taken to imply that it is not free from liability incurred after the death. Had the intention been to ensure payment to the dependent, without any deduction of any kind whatever, the Act could very well have expressly provided so. In the kind circumstances the Provident Fund balances vesting in a dependent after the subscriber's death, and where such debts are due to the Government by whom the balances are payable they could be set off against liable to attachment for death incurred by the dependent such balances under the general law relating to the setting off of claims and counter-claims between the two parties.

20. Retirement of Subscriber –

(a) when a subscriber has proceeded on leave preparatory to retirement or if he is employed in a vacation department, on leave preparatory to retirement combined with vacation, or

(b) while on leave, has been permitted to retire or been declared by a competent medical authority to be unfit for further service, the amount standing to his credit in the Fund shall, upon application made by him in that behalf to the Accounts Officer, become payable to the subscriber:

Provided that the subscriber, if he returns to duty, shall, except where the Government decides otherwise, repay to the Fund for credits in the account, the amount paid to him from the Fund in pursuance of this rule with interest thereon at the rate provided in Rule 11 in cash or securities or partly in cash and partly in securities, by installments or otherwise, by recovery from his emoluments or otherwise, as may be directed by the authority competent to sanction an advance for the grant of which, special reasons are required under sub-rule 3 of Rule 13.

21. Procedure on death of a subscriber – On the death of a subscriber before the amount standing to his credit has become payable, or there the amount become payable, before payment has been made;

On the death of a subscriber before the amount standing to his credit has become payable, or where the amount become payable, before payment has been made;

(i) When the subscriber leaves a family –

(a) if a nomination made by the subscriber in accordance with the provisions of Rule 5 or the corresponding rule heretofore in force in favour of a member or members of his family subsists, the amount standing to his credit in the Fund or the part thereof to which the nomination relates shall become payable to his payable to his nominee or nominees in the proportion specified in the nomination,

(b) if no such nomination in favour of a member or members of the family of the subscriber, subsists or if such nomination relate only to a part of the amount standing to his credit in the Fund, the whole amount or the part

thereof to which the nomination does not relate, as the case may be, shall notwithstanding any nomination purporting to be in favour of any person or persons other than a member or members of his family, become payable to the members of his family in equal shares;

Provided that no share shall be payable to –

- 1) sons who have attained majority;
- 2) sons of a deceased son who have attained majority;
- 3) married daughters whose husbands are alive;
- 4) married daughters of a deceased son whose husbands are alive if there is any member of the family other than those specified in clauses (1), (2), (3) and 4:

Provided further that the widow or widows and the child or children of a deceased son shall receive them between in equal parts only the share which that son would have received if he had survived the subscriber and had been exempted from the provisions of clause (1) of the first proviso.

(ii) When the subscriber leaves no family, if a nomination made by him in accordance with the provisions of Rule 5 or of the corresponding rule here-to-force in force in favour of any person or persons subsists, the amount standing to his credit in the Fund or the part thereof to which the nomination relates, shall become payable to his nominee or nominees in the proportion specified in the nomination.

State Government's Decisions:

Decision No. (1). – **Disbursement of provident Fund moneys to person on behalf of minors** – The payment of provident fund moneys to the extent Rs. 5,000 (or first Rs.5,000 where the amount payable exceeds Rs. 5,000 on behalf of the minor (s) can be made to his/their natural guardian or where no natural guardian exists to the person considered fit by the Head Office to receive payment on behalf of the minor (s) without requiring him to produce a guardianship certificate. The person receiving payment on behalf of the minors should be required to execute a bond signed by two sureties agreeing to indemnify Government against any subsequent claim. The balance in excess of Rs.5,000,if any would be paid in accordance with the normal rules. Form to execute the Bond of indemnity is given below.

It is essential, however, that in the absence of a natural guardian there should be adequate *prima facie* grounds for making payment to the person claiming it. Such ground can exist only if he/she is shown by a sworn declaration to be de-facto guardian and his/her *bona fides* have been ascertained. Even if a guardian has not yet been appointed by the Court, if the minor and his property are in the custody of some person, such person is in law a *de-facto* guardian. The authorities making payment should therefore require the person who comes forward to claim payment on behalf should therefore require the person who comes forward to claim payment o behalf of the minor to satisfy them by an affidavit that he is in charge of the property of the minor has no property other than the Provident Fund money the minor is in his custody and care. The affidavit is to be produced in addition to the indemnity bond with suitable sureties.

Form of Bond of Indemnity for drawal of Provident Fund money due to the

minor child/children of deceased Subscriber by a person other than its/their natural guardian (to the extent of Rs.5, 000)

KNOWALL MEN by these presents We
(a).....
son/daughter/wife of (hereinafter called
'obligator') resident of and (b) (l)
..... /son/da
ughter
wife of and resident of and (b)
(2)....
.. /son/daughter of And resident of
.....(hereinafte
r)
called the sureties'), Sureties on her/his/their behalf are held firmly to the Governor of
Meghalaya

.....
(hereinafter called the 'Government') in the sum of Rupees (in words and
figures) to be paid to the Government or his successors or assigns for which payment
to be well and truly made, each of us severally binds himself and his heirs, executors,
administrators and assigns an every two and all of us jointly bind ourselves and our
respective heirs, executors, administrators and assigns firmly by these presents.

Signed this day of.....one thousand, nine hundred
and
.....

WHEREAS (c) Was at the time of his death a subscriber to the
General Provident Fund and whereas the said (c) Died on the
day of
..... One thousand, nine hundred and
.....
..... and a sum of Rupees (in words and
figures) payable by Government on account of his General Provident Fund
accumulations AND WHEREAS the above bounden Obligator claim (s)
..... the said sum on behalf of the minor child/children of the
said (c).....but has/have not
obtained a
guardianship certificates.

AND WHEREAS the obligator (s) has/have satisfied the (d)
..... (Offic
er
concerned) that he/she/they is/are entitled to the aforesaid sum and that it would
cause undue delay and hardship if the claimant were required to produce a
guardianship certificate and WHEREAS Government desire to pay the said sum to the
claimant but under Government rules and orders it is necessary that the claimant
should first execute a bond with two sureties to indemnity Government against all
claims to the amount so due as aforesaid to the said (c)..... (deceased) before
the said sum can be paid to the claimant which the obligator and at hi/her request the
sureties have agreed to do.

NOW THE CONDITION of this bond is such that if after payment has been made to the claimant the Obligor or Sureties shall in the event of a claim being made by any other persons against Government with respect to the aforesaid sum of Rs..... refund to Government the sum of Rupees..... and shall otherwise indemnity and keep the Government harmless and indemnified from all liabilities in respect of the aforesaid sum and all costs incurred in consequence of any claim thereto THEN the above written bond or obligations shall be void but otherwise the same shall remain in full force, effect and virtue. The Government have agreed to bear the stamp duty, if any, chargeable on these presents.

IN WITNESS WHEREOF the obligator and the Surety/Sureties hereto have set and subscribed their respective hand hereunto on the day, month and year above written.

Signed by the above named 'Obligor' in the presence of

(1) _____

(2) _____

Signed by the above named 'Surety/Sureties'

(1) _____

(2) _____

in the presence of

(Name and designation of the witness)

Accepted for and on behalf of the Governor of Meghalaya by

(Name and designation of the officer directed or authorised in pursuance of Article 299 (1) of the Constitution to accept

the bond for and on behalf of the
Governor.)

Decision No. (2) – **Payment to legal representative on proper identity** – It is not legally necessary in every case that probate, letters of administration or a succession certificate should be taken out in order to confer a title upon the heirs. It is a question of identity and if the identity of the legal representative can be established beyond doubt payment can be made to the legal representative, without the production of probate, letter of administration or a succession certificate, as the case may be. The difficulty is to establish identity and in any case when probate, letters of administration or succession certificates are not produced the case should be referred to the Government of Meghalaya.